TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 707

CLARA SCHNEIDER, PETITIONER,

vs.

THE STATE (TOWN OF IRVINGTON).

ON WRIT OF CERTIORARI TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

PETITION FOR CERTIORARI FILED FEBRUARY 27, 1939.

CERTIORARI GRANTED APRIL 3, 1939.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 707

CLARA SCHNEIDER, PETITIONER,

vs.

THE STATE (TOWN OF IRVINGTON)

ON WRIT OF CERTIORARI TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 8, 1939.

—1039

[fol. 1] **IN SUPREME COURT OF NEW JERSEY**

On Certiorari

THE STATE (Town of Irvington), Plaintiff-Respondent,

v.

CLARA SCHNEIDER, Defendant-Prosecutrix.

NOTICE OF APPEAL AND GROUNDS

To Meyer Q. Kessel, Esq., Attorney for Plaintiff-Respondent. Essex County Court of Common Pleas and to the Clerk of the Essex County Court of Common Pleas,

SIRS:

Please take notice that the defendant-prosecutrix in the above entitled cause appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause on the following grounds, to wit:

1. Because the Supreme Court erred in giving judgment to the plaintiff-respondent instead of the defendant-prosecutrix, in that:

(a) The ordinance of the Town of Irvington known as "an Ordinance regulating canvassing within the Town of Irvington and providing penalties for the violation thereof", upon which the Court of Common Pleas of Essex County based its judgment of conviction, is unconstitu-
[fol. 2] tional and violative of both the State and Federal Constitutions insofar as it attempts to prohibit the kind of work engaged in by the defendant-prosecutrix as set forth in the stipulation of facts, in that it deprives the defendant-prosecutrix of the right to worship Almighty God in a manner agreeable to the dictates of her own conscience (N. J. Constitution, Art. 1, Sec. 3) and to the liberty of peoples generally (ibid, Art. 1, Sec. 1), and also violates the provisions of Sec. 1 of the Fourteenth Amendment to the Constitution of the United States in that it unreasonably restricts and denies the free exercise and enjoyment of religious profession and worship of the defendant-prosecutrix.

(b) The complaint is insufficient in that it fails to charge an offense.

(c) The evidence submitted before the Essex County Court of Common Pleas was not sufficient on which to convict the said defendant-prosecutrix.

(d) The ordinance marked Exhibit S 1 under which the defendant-prosecutrix was convicted is not applicable under the evidence submitted before the Essex County Court of Common Pleas.

(e) This being a Christian nation, it may not be assumed that a legislative body, in the absence of express language to the contrary, intended to legislate against the worship of Jehovah God and the peaceable and moral practice of a Christian doctrine.

(f) The act of the defendant-prosecutrix was outside of the provision of the ordinance, and the defendant-prosecutrix, in and about her work as shown by the evidence submitted before the Essex County Court of Common Pleas was not amenable to its provisions.

[fol. 3] (g) The ordinance here involved is invalid in itself and as applied to the acts of the defendant-prosecutrix under the provisions of the Constitution of this State, and of the Fourteenth Amendment to the Constitution of the United States in that it unreasonably restricts the freedom of speech of defendant-prosecutrix.

Respectfully yours, Jacob S. Karkus, Attorney for Defendant-Prosecutrix.

Sat Below: Brogan, Chief Justice, Justices Trenchard and Parker.

Service of a true copy of the within Notice of Appeal and Grounds is hereby acknowledged this 21st day of September, 1938.

(Signed) Meyer Q. Kessell, Attorney for Plaintiff-Respondent.

[fol. 4] IN SUPREME COURT OF NEW JERSEY

WRIT OF CERTIORARI

(L. S.)

Essex County Court of Common Pleas and to the Clerk of the Essex County Court of Common Pleas, Greeting:

We being willing, for certain reasons, to be certified of the judgment of conviction, order and proceedings given

and made by the Court of Common Pleas of Essex County, in a certain proceeding brought against Clara Schneider, by the Town of Irvington, in which, as appears, judgment of conviction was rendered against the said Clara Schneider on the 12th day of May, 1937;

We do command you, the said Essex County Court of Common Pleas and the Clerk of the Essex County Court of Common Pleas, that the judgment of conviction, and all proceedings in the aforesaid proceeding before the Essex County Court of Common Pleas, together with all papers and things touching or appertaining to the same, as fully and entirely before you they remain, to our Justices of our Supreme Court of Judicature at Trenton on fifteenth of July next, you certify and send, together with this writ, that therein may be done what of right and according to the laws of the State of New Jersey should be done.

Witness, Thomas J. Brogan, Esquire, Chief Justice of our Supreme Court at Trenton, this 25th day of June, in the year of our Lord one thousand nine hundred and thirty-seven.

Fred L. Bloodgood, Clerk.

Jacob S. Karkus, Attorney for Prosecutor.

[fol. 5] I allow the within writ. Let it be sealed. Let the defendant be paroled in the custody of Jacob S. Karkus, no bond to be furnished.

J. L. Bodine, Justice, Supreme Court.

Dated, June 25, 1937.

In Court of Common Pleas of Essex County

Certificate Accompanying Return

State of New Jersey,
County of Essex, ss:

I, Richard Hartshorne, Judge of the Court of Common Pleas, in and for the County of Essex, State of New Jersey, and Russell C. Gates, Clerk of the Court of Common Pleas in and for the County of Essex, State of New Jersey, Do Hereby Certify and return to the Supreme Court of Judicature of the State of New Jersey, the record of conviction of the Police Court of the Town of Irvington, New Jersey, in

the case of The State (Edward Durning), Complainant, vs. Clara Schneider, Defendant, and Order of the Court of Common Pleas, together with all things touching and concerning the same as by the within writ to us directed and as commanded.

In Witness whereof, we have hereunto set our hands and Official Seal, this seventh day of October, A. D. 1937.

Richard Hartshorne, Judge of the Court of Common Pleas, Essex County, New Jersey. Russell C. Gates, Clerk of the Court of Common Pleas, Essex County, New Jersey. (Seal.)

[fol. 6] In Recorder's Court, Irvington, New Jersey.

Edward Durning, Complainant,

v.

Clara Schneider, Defendant

Notice and Grounds of Appeal—Filed December 21, 1935.

To His Honor Thomas Holleran, Recorder of the Police Court of the Town of Irvington, or To Whom It May Concern:

Please take notice that I, the undersigned, hereby appeal to the Essex County Court of Common Pleas from the whole of the judgment of conviction, which you rendered against me on December 17, 1935, on the charge of having violated an ordinance concerning canvassing, said judgment having been rendered in your Court known as the Police Court of the Town of Irvington.

This appeal is taken to the Essex County Court of Common Pleas, and the grounds for the said appeal are as follows:

(a) The ordinance is unconstitutional.

(b) The ordinance is invidious and vicious and goes beyond the occasion of its enactment.

(c) The Court found as a fact that the defendant did violate the ordinance by canvassing when there was no proof offered or admitted during the trial from which the Court

[fol. 7] could have found as a matter of fact that the defendant had violated the ordinance in the particular manner.

Wherefore, the defendant hereby appeals to the Essex County Court of Common Pleas, who is empowered to hear and determine the same and give a trial de novo.

Respectfully, Jacob S. Karkus, Attorney.

In Court of Common Pleas, County of Essex

The State (Town of Irvington), Complainant,

v.

Clara Schneider, Defendant

Stipulation as to Evidence

It is hereby stipulated between Meyer Q. Kessel, Esq., Attorney for complainant of record, and Jacob S. Karkus, Esq., Attorney for the defendant, Clara Schneider, that the stipulation entered into in the case of The State (Officer Harrison Hart) v. Clara Schuster between Meyer Q. Kessel and Abram Waks, Esquires, dated November 16, 1936, together with the exhibits therein mentioned, were presented in evidence before Hon. Richard Hartshorne, Judge of the Court of Common Pleas of Essex County, for his consideration in the above captioned case, with the understand-

[fol. 8] ing that the substance of facts therein stated apply to the defendant herein.

Meyer Q. Kessel, Attorney of Complainant. Jacob S. Karkus, Attorney of Defendant.

Dated, October 15, 1937.

In Court of Common Pleas, County of Essex

The State, Officer Harrison Hart, Complainant,

v.

Clara Schuster, Defendant

Stipulation in Schuster Case

It is hereby stipulated and agreed between Meyer Q. Kessel, Attorney for the Town of Irvington, N. J., and

Abram Waks, Attorney for the defendant Clara Schuster, that the following testimony and documents shall be considered as having been presented in evidence before Hon. Richard Hartshorne, Judge of the Court of Common Pleas of Essex County, for his consideration in the above captioned case.

1. That on February 16, 1936, an ordinance regulating canvassing was lawfully in effect in the Town of Irvington, a copy of which ordinance is marked Exhibit "S-1".

[fol. 9] 2. That on February 16, 1936, defendant Clara Schuster did call from house to house in the Town of Irvington, and did show to occupants of several houses therein a certain card of testimony and identification issued to defendant by the Watch Tower Bible and Tract Society as one of Jehovah's witnesses, and did leave or offer to leave with said occupants certain books or booklets, for which defendant solicited or accepted contributions in the form of money, which card, books and booklets are marked as exhibits herein, to wit:

Testimony and Identification Card, marked Exhibit "S-2";
Golden Age, number 427, marked Exhibit "S-3";
Booklet Government, marked Exhibit "S-4";
Booklet Escape to the Kingdom, marked Exhibit "S-5".

3. Defendant Ciara Schuster did not apply for or obtain a permit from the police department in conformance with the ordinance; because she conscientiously believed and maintained that to apply for said permit would be an act of disobedience to the command of Almighty God.

4. Defendant Clara Schuster is a Christian and one of Jehovah's witnesses, who are engaged in preaching the Gospel by expounding the word of God, either orally or in printed form, to persons by going from house to house, which work defendant alleges is done in obedience to the mandate of Almighty God.

5. That defendant Clara Schuster was so engaged on February 16, 1936, in said Town of Irvington, when she went from house to house and presented said card and

[fols. 10-12] offered to leave or did leave said book or booklets and solicited or received contributions in the form of money.

Dated: November 16, 1936.

Meyer Q. Kessel, Attorney of Complainant. Abram Waks, Attorney of Defendant.

Bond on appeal for $200.00 approved, omitted in printing.

[fol. 13] Department of Public Safety

Washington Avenue, Between Clinton and Springfield Avenues

In Recorder's Court of the Town of Irvington

Thomas J. Holleran, Recorder

Complaint for Section 1 Ordinance 1437

The State, Officer Edward Durning, Complainant, No. Police Department, Town or City Irvington, N. J.

v.

Clara Schneider, Defendant, No. 365 Grove Street, Town or City Newark, N. J.

Complaint

Town of Irvington,
County of Essex,
State of New Jersey, ss:

Edward Durning, being duly sworn, on his oath says that on the seventh day of December, 1935, at about 2:20 o'clock P. M. at or near No. 138 Hall Street, in the Town of Irvington, County of Essex, State of New Jersey, one Clara Schneider did violate the provision of Section 1 Ordinance 1437 of the Town of Irvington, N. J., entitled "An Ordinance regulating canvassing within the Town of Irvington and providing penalties for the violation thereof" in that she did canvass without first having reported to and re-

ceived a written permit from the Chief of Police or the Officer in Charge at Police Headquarters.

Wherefore, the said complainant complains against said [fol. 14] defendant and prays that he may be apprehended and dealt with according to law.

Edward Durning, Complainant.

Subscribed and sworn to before me this 7 day of December, 1935. Thomas J. Holleran, Recorder of the Town of Irvington.

In Recorder's Court, Town of Irvington

Record of Conviction

Defendant's age: —.
Occupation: —.
Place: —.
Date arrested: Saturday December 7, 1935.
Date summoned: —.
Date to appear before Judge: Tuesday December 17, 1935 at 9:30 A. M.
How disposed of: —.
Witnesses: Elsie Brunner, 138 Ball Street, Irvington, N. J. Margaret Sewerd, 132 Ball Street, Irvington, N. J.
Plea of Not Guilty—Guilty Fine $100 or Thirty (30) days in Jail.
December 20th, 1935. Notice of Appeal served on this court.

Ordinance

Ordinance No. 1437

Ordinance Regulating Canvassing Within the Town of Irvington and Providing Penalties for the Violation Thereof

Be it Ordained by the Board of Commissioner of The Town of Irvington, in the County of Essex, State of New Jersey, as follows:

[fol. 15] Sec. 1. No person except as in this ordinance provided shall canvass, solicit, distribute circulars, or other matter, or call from house to house in the Town of

Irvington without first having reported to and received a written permit from the Chief of Police or the officer in Charge at Police Headquarters.

Sec. 2. The Chief of Police or in his absence the officer in charge at Police Headquarters shall have power to grant permit to canvass, which permit shall specify the number of hours or days that the permit will be in effect and such officer shall refuse to issue a permit in all cases where the application of the canvasser or further investigation to be made at the discretion of such officer, shows that the canvasser is not of good character, or that he is canvassing for a project not free from fraud. The Chief of Police or in his absence the officer in charge at Police Headquarters shall revoke the permit for failure or refusal on the part of the permittee to observe the rules and regulations herein set forth.

Sec. 3. Before the permit may be issued the convasser shall make an application to canvass, giving his or her full name and address, age, height, weight, place of birth, whether married or single, length and place of residence, whether or not previously arrested or convicted of crime, by whom employed, address of employer, clothing worn and description of project for which he or she is canvassing. Each applicant shall be finger printed and photographed before a permit shall be issued.

Sec. 4. Rules and Regulations:

No person shall canvass within the Town, except between the hours of 9 a. m. and 5 p. m. A copy of the permittee's photograph shall be carried on his or her permit, which photograph shall be furnished by the applicant. The permittee shall exhibit his or her permit to any police officer or other person upon request. The permittee shall [fol. 16] be courteous to all persons in canvassing and shall not importune or annoy any of the inhabitants of the Town and shall conduct himself or herself in a lawful manner. On expiration of the permit, the holder thereof shall surrender the same to the officer in charge at Police Headquarters.

Sec. 5. This ordinance shall not affect any person engaged in the delivery of goods, wares, or merchandise or other articles or things in the regular course of business

to the premises of persons ordering or entitled to receive the same.

Sec. 6. Any person violating the provisions of this ordinance shall be subject to a fine not exceeding One Hundred Dollars ($100.00) or to imprisonment in the County Jail for a period not exceeding thirty days. In the event of the imposition of a fine and default in the payment thereof the defendant may be imprisoned in the County Jail for a term not exceeding thirty days.

Sec. 7. This ordinance shall take effect on final passage and publication according to law.

Adopted September 10, 1935.

(Signed) J. Edward Jacobi, Herbert Kruttschnitt, Harry E. Stanley, Percy A. Miller, Commissioners.

Attested by Town Clerk.

[fol. 17] In Court of Common Pleas of Essex County

On Appeal from Summary Conviction

The State, Edward Durning, Complainant-Appellee,

v.

Clara Schneider, Defendant-Appellant

Order Affirming Conviction—Filed May 13, 1937

This matter being opened to the Court by Meyer Q. Kessel, Attorney for the complainant-appellee, in the presence of Jacob S. Karkus, Esq., appearing for the defendant-appellant, and it appearing to the Court that by stipulation entered into between counsel for the parties hereto, it was agreed that the result to be reached by this Court in the appeal of Clara Schuster, William Dickinson and Amanda Morgan from their convictions in the Irvington Recorder's Court, should control the disposition of this appeal;

And it appearing to the Court that the facts as stipulated in the appeals hereinbefore referred to are similar in all respects and involve the same question of law, and the Court having considered the same and having found the said Clara Schuster, William Dickinson and Amanda Morgan guilty of having violated Ordinance No. 1437 of the

Town of Irvington referred to in the complaints made against the said appellants, and having affirmed the said convictions, now therefore,

[fol. 18] The defendant-appellant, Clara Schneider, on this 12th day of May, 1937, be and she is hereby found guilty of violating Ordinance No. 1437 of the Town of Irvington, as charged in the complaint made against her;

And it is Ordered that the judgment of conviction entered in the Recorder's Court of the Town of Irvington against the said defendant-appellant, Clara Schneider, be and the same is hereby affirmed;

And it is further Ordered that the said Clara Schneider appear before the Court of Common Pleas of the County of Essex on the 24th day of May, 1937, to receive the sentence of this Court then and there to be imposed.

Richard Hartshorne, Judge.

Appearance for the purpose of the above Order noted.
Jacob S. Karkus, Attorney for Defendant-Appellant.

[fol. 19] In Court of Common Pleas of Essex County

The State

v.

Elizabeth Wheeler, Louis LeGrange, Daniel Barnes, Tito D. Santo, Clara Schuster, William Dickinson, and Amanda Morgan, Defendants

On Appeal from Summary Conviction

For the State (Town of Irvington) appears Meyer Q. Kessel, Esq.

For the defendants appear Abram Waks, Esq., and O. R. Moyle, Esq., of the Wisconsin Bar.

Opinion in Schuster Case

Hartshorne, J.:

A group of individuals calling themselves "Jehovah's witnesses", incorporated under a different name under the laws of Pennsylvania, have, during the last few years, been almost continuously in conflict with the authorities through-

out northern New Jersey, if not elsewhere. This conflict has been due, practically entirely, to the insistence of this group on their absolute right, without any regulation whatsoever, to go from house to house at any hour of the day or night, to distribute their literature and solicit subscriptions. This disturbance of the peace and quiet of our citizens in their homes, let alone the possible danger to the inhabitants in having strangers in the community, unknown to the police, going from house to house by day and night, has been repeatedly held unlawful by the courts, [fol. 20] under ordinances lawfully enacted in a series of municipalities for the protection of their inhabitants. A glance at merely the list of the below cited cases, all dealing with this very question, makes one wonder whether the group, due to their emotional state, are unable to comprehend the principles of law involved and so repeatedly decided.

Dziatkiewicz v. Parker, 115 N. J. L. 37;
Bergenfield v. Peterson, 7 Misc. 1019;
Maplewood v. Albright, 13 Misc. 46;
Semansky v. Common Pleas, 13 Misc. 589;
Nutley v. Zaryk, Essex Common Pleas, April 19, 1934, unreported;
Maplewood v. Hesler, Essex Common Pleas, October 11, 1934, unreported.

While such situation may be understandable on the part of the lay members of the group, it is incomprehensible in their legal advisors, themselves officers of the court, sworn to uphold the law. For them to advise their clients, in the face of such repeated decisions, to continue to violate such principles of law, constitutes a violation of the ethics of the profession, if it is not in fact a contempt of the courts which have laid down such principles. (American Bar Association Code of Ethics, Section 32.)

Since this aspect of the matter has apparently not occurred to those who have been the repeated legal advisors of the group, it might savour of harshness to act upon such principles before warning is given. But that this warning may be clear, that it may be definite both to the legal advisors and to those advised, the court will restate in all patience the principles involved and so oft decided.

There are no absolute rights in any individual in any community, civilized or uncivilized. In an uncivilized com-

munity there are no rights as such, for might makes right. In a civilized community all have rights, and therefore the [fol. 21] rights of each must be exercised with due regard for the rights of others. This applies to all rights referred to in a Constitution, to the "privilege of worshipping Almighty God" (New Jersey Constitution, article I, Section 3) to the freedom of speech (Ibid, article I, section 5) and to the liberties of the people generally (Ibid, article I, section 1; United States Constitution, Amendment 14). For our state constitution itself expressly refers to the "abuse of" the freedom of speech. And while generally in this country people have "the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine," such right is expressly conditioned upon the fact that it "does not violate the laws of morality and property and does not infringe personal rights" (Watson v. Jones, 13 Wallace 679; Cooley, Constitutional Limitations, page 663.)

The action of the group here does invade both personal and property rights. They invade the personal rights of the citizens when they insist upon invading their private homes at any hour of the day or night. They invade their property rights by the same token. In making such invasions among the citizenry generally, they similarly invade the rights of the public. All of these rights the representatives of the public have not only the right, but the duty, to protect under the police power. When such regulations are promulgated by the duly constituted representatives of the public, it is not for the courts to set them aside unless they are purely arbitrary and without basis in reason, and as long as they exist, they govern all within their jurisdiction. To require, as in the ordinance in question here, (Irvington ordinance No. 1437), that the house to house canvasser shall not receive a canvassing permit, if either he is "not of good character," or if he is "canvassing for a project not free from fraud," cannot by the wildest stretch of the imagination be called unreasonable. [fol. 22] Nor, in the face of the all too frequent burglaries in the metropolitan section, and the necessity for a reasonable amount of peace in one's home, can it be said to be without reason, to prohibit canvassing from house to house in the hours of the early morning or after nightfall.

The above is all upon the hypothesis that this disturbing of the citizens in their homes at unseasonable hours is "the worshipping Almighty God", preserved, but subject to limitations, in the provisions of the New Jersey constitution cited supra. But that such canvassing is not "worshipping Almighty God" seems obvious on its face. In common parlance at least, and the Constitution is meant for the common understanding, my own worship of God is a different thing from my inducing others to worship as I do. It is the latter only of which the defendants' house to house canvassing consists.

That the scriptural words, "as ye enter into the house salute it" (Matthew 10:12) relied on by defendants, are no mandate governing worship itself, seems equally clear. That they are not even to be taken literally is also clear. For the immediately preceding verses are: "Provide neither gold nor silver nor brass in your purses; nor scrip for your journey, neither two coats, neither shoes . . . ." (Matthew 10:10 and 11). If these are literal mandates "Jehovah's witnesses" themselves violate them daily. Further, how can the group object to a reasonable canvassing permit when they are willing to take out automobile licenses in order to do such canvassing, and pay incorporation fees in order to conduct their entire, allegedly religious operations? However, even assuming this house to house canvassing to be "worshipping Almighty God," it is subject to the reasonable regulations here in effect as above stated.

Nor is there the slighest evidence of a denial of the equal protection of the law in the enforcement of the ordinance. [fol. 23] If it should appear that other groups professing a religious purpose are systematically permitted to violate the ordinance, while the "Jehovah's witnesses" are not, the courts lie open; as they do also in the event of the denial to the defendants of canvassing permits for other causes than bad character or fraudulent project. But no such situation is here shown to exist. Nor can the group take comfort from Coughlin v. Sullivan, 100 N.J.L. 42, or State v. DeLaney, 1 Misc. 619. In the Coughlin case the court found as a fact that the purpose of the ordinance was to prevent the littering of the streets, and that the acts in question would not so result. Here the purpose is to pro-

tect the citizens in their homes, particularly at unseasonable hours. This purpose would be nullified by defendants' acts, if uncontrolled. In the Delaney case the alleged acts of worship were so conducted, in a church, as to interfere with no rights of others, public or private. The exact opposite exists here as previously stated. That it was the intent of the ordinance in question to cover all whose acts had the result sought to be guarded against, whether the purpose of the canvassing was purely commercial, purely religious, or partially both, is evident from the generality of the terms of the ordinance itself.

The court might further call attention to the decision of our Court of Errors and Appeals in Harwood v. Trembly, 97 N.J.L. 173, cited in Coughlin v. Sullivan, supra, relied on by defendants, as follows:

"The constitutional guaranty of liberty of speech no more authorizes a citizen to appropriate to his own use the public property of a community for the purpose of exercising that guaranty, than it permits him to occupy in invitum the private property of a fellow citizen for the same purpose."

[fol. 24] In other words, in the Harwood case the defendants had no right to obstruct the streets by a meeting, without permit, for the alleged purpose of free speech. So here they have no right to invade the private homes of citizens at all hours in invitum, for alleged free speech, worship or otherwise, in violation of valid regulations by the lawful representatives of the public.

When defense counsel advise their clients clearly and calmly of the above principles, the latter will know that they are fully free to carry on their house to house canvassing through all reputable individuals for all lawful purposes, religious or otherwise, as long as they do so with due regard to the rights of others, as determined by the representatives of the public. Surely no professing Christian can fail to have due regard for the rights of others.

The convictions of the defendants will be affirmed.

Dated, Feb. 26, 1937

Richard Hartshorne, Judge.

[fol. 25] In Court of Common Pleas of Essex County

The State, Edward Duening, Complainant-Appellee,

v.

Clara Schneider, Defendant-Appellant

Notice of Motion to Dismiss Appeal—Filed January 25, 1937

To Jacob S. Karkus, Esq., Attorney for Defendant-Appellant, 313 State St., Perth Amboy, N. J.

Dear Sir:

Please take notice, that on Monday, the 25th day of January, 1937, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, I shall make application to the Honorable Richard Hartshorne, one of the judges of our said Court at the Court House, High St., Newark, N. J., for an Order dismissing the within appeal on the ground that the said defendant-appellant, Clara Schneider, has not put the within appeal on the list for trial at the next term of court after the within cause had been appealed, pursuant to the statute in such case made and provided.

Meyer Q. Kessel, Attorney for Complainant-Appellee.

Dated, January 15th, 1937.

[fol. 26] In Supreme Court of New Jersey

Clara Schneider, Prosecutor,

v.

The State (Town of Irvington), Defendant

Notice of Argument—Filed November 22, 1937

To County Clerk of Essex County and Meyer Q. Kessel, Attorney for Town of Irvington

Please take notice that on January 18, 1938, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, I shall move the argument in the above matter before the New Jersey Supreme Court, Part. II, State House, Trenton, New Jersey, and urge the reasons filed in this case as grounds for the setting aside of the affirmance in the proceeding had in the Court of Common Pleas on an appeal

of a conviction entered by Thomas Holleran, Recorder of the Police Court of the Town of Irvington, in a suit in which The State (Officer Edward Durain, Town of Irvington) was complainant and Clara Schneider was defendant.

Jacob S. Karkus, Attorney for Prosecutor.

Service of a true copy of Notice of Argument of the above entitled matter is hereby acknowledged this 9th day of November, 1937.

Russell C. Gates, County Clerk of Essex County.

[fol. 27] Service of a true copy of Notice of Argument of the above entitled matter is hereby acknowledged this 9th day of November, 1937.

Meyer Q. Kessel, Attorney for Town of Irvington.

In Supreme Court of New Jersey

Clara Schneider, Prosecutor,

v.

The State (Town of Irvington), Respondent

Reasons for Reversal—Filed October 23, 1937.

The said prosecutor, by her attorney, comes and prays that the judgment of conviction of the Essex County Court of Common Pleas, may be set aside, reversed, and for nothing holden, for the following reasons:

1. The ordinance of the Town of Irvington known as "An Ordinance regulating canvassing within the town of Irvington and providing penalties for the violation thereof," upon which the Court of Common Pleas of Essex County based its judgment of conviction, is unconstitutional and violative of both the State and Federal Constitutions insofar as it attempts to prohibit the kind of work engaged in by the prosecutor as set forth in the stipulation of facts, in that it deprives the prosecutor of the right to worship [fol. 28] Almighty God in a manner agreeable to the dictates of her own conscience (N. J. Constitution, Art 1, Sec. 3) and to the liberty of peoples generally (ibid, Art. 1, Sec. 1), and also violates the provisions of Sec. 1 of the Fourteenth Amendment to the Constitution of the United States in that it unreasonably restricts and denies the free exercise and enjoyment of religious profession and worship of the prosecutor.

2. The complaint is insufficient in that it fails to charge an offense.

3. The evidence submitted before the Essex County Court of Common Pleas was not sufficient on which to convict the said prosecutor.

4. The ordinance marked Exhibit S-1 under which the prosecutor was convicted is not applicable under the evidence submitted before the Essex County Court of Common Pleas.

5. This being a Christian nation, it may not be assumed that a legislative body, in the absence of express language to the contrary, intended to legislate against the worship of Jehovah God and the peaceable and moral practice of a Christian doctrine.

6. The act of the prosecutor was outside of the provision of the ordinance, and the prosecutor, in and about her work as shown by the evidence submitted before the Essex County Court of Common Pleas, was not amenable to its provisions.

7. The ordinance here involved is invalid in itself and as applied to the acts of the prosecutor under the provisions of the Constitution of this State, and of the Fourteenth Amendment to the Constitution of the United States in that it unreasonably restricts the freedom of speech of prosecutor.

Jacob S. Karkus, Attorney for Prosecutor.

[fol. 29] In Court of Errors and Appeals of New Jersey

The State (Town of Irvington), Plaintiff-Respondent,

v.

Clara Schneider, Defendant-Prosecutrix,

Notice of Argument

To Meyer Q. Kessel, Esq., Attorney for Plaintiff-Respondent. Essex County Court of Common Pleas and to the Clerk of the Essex County Court of Common Pleas:

Please take notice that on Tuesday, October 18, 1938, at ten o'clock in the forenoon, or as soon thereafter as counsel

can be heard, I shall move the argument in the above matter before the Court of Errors and Appeals, State House, Trenton, New Jersey, and urge the ground of appeal and the reasons filed in this case as grounds for the setting aside of the affirmance in the proceeding had in the Court of Common Pleas on an appeal of a conviction entered by Thomas Holleran, Recorder of the Police Court of the Town of Irvington, in a suit in which The State (Officer Edward Durning, Town of Irvington) was complainant and Clara Schneider was defendant.

Jacob S. Karkus, Attorney for Defendant-Prosecutrix.

Sat Below: Brogan, Chief Justice, Justices Trenchard and Parker.

[fol. 30] In Court of Errors and Appeals of New Jersey

[Title omitted]

Affidavit of Service

State of New Jersey,
County of Middlesex, ss:

Seymour Turner, being duly sworn, according to law, upon his oath deposes and says:

1. I am connected with the office of Jacob S. Karkus, Esq., attorney for defendant-prosecutrix in the above entitled matter.

2. On September 22, 1938, I served a true copy of Notice of Argument in the above entitled matter on Meyer Q. Kessel, Esq., attorney for plaintiff-respondent in the above entitled matter, by handing said true copy of Notice of Argument to him personally, at his office, 1060 Broad Street, Newark, New Jersey.

Seymour Turner.

Sworn and subscribed to before me this 23rd day of September, 1938. Adele M. Brown, a Notary Public of New Jersey.

[fol. 31] In Supreme Court of New Jersey

The State (Town of Irvington), Plaintiff-Respondent,

v.

Clara Schneider, Defendant-Prosecutrix

Remittitur—Filed August 10, 1938

This matter coming on to be heard at the January Term, 1938, before this Court on a Writ of Certiorari and the Court having inspected the transcript and proceedings of the Court of Common Pleas of the County of Essex, returned with the certiorari in this cause, and the reasons for reversing the judgment below, and having read the briefs of counsel therein, and having duly considered the same;

It is on this 10th day of August, 1938,

Ordered, that the judgment of the Court of Common Pleas of the County of Essex, be in all things affirmed; and that the Writ of Certiorari herein be dismissed, with costs; and that the record and proceedings be remitted to the said Court of Common Pleas of the County of Essex to be therein proceeded with according to law and the practice of the said Court.

Entered August 10th, 1938. On motion of Meyer Q. Kessel, Attorney for Plaintiff-Respondent.

A true copy.

Fred L. Bloodgood, Clerk.

[fol. 32] In Supreme Court of New Jersey, January Term, 1938

No. 207

The State (Town of Irvington), Plaintiff-Respondent,

v.

Clara Schneider, Defendant-Prosecutrix

Submitted January 18, 1938; Decided July 20, 1938

On Certiorari, etc.

Before Brogan, Chief Justice, and Justices Trenchard and Parker

For defendant-prosecutrix, Jacob S. Karkus (O. R. Moyle, of the New York Bar, on the brief).

For plaintiff-respondent, Meyer Q. Kessel (Thomas L. Hanson, of Counsel).

OPINION

PER CURIAM:

The record in this case is confusing and indeed incomplete in certain respects.

However, it indicates that the prosecutrix of the writ (hereinafter called the defendant), together with others, were individuals calling themselves Jehovah's witnesses. They were arrested, and convicted by the recorder's court in Irvington, charged with the violation of the provisions of the canvassing ordinance of the town in that they did canvass without having first reported to and received a written permit as required by the ordinance. The group, or at least several of them, took an appeal to the Essex County Court of Common Pleas and that court seems to have found them guilty, and we have here now a writ of certiorari obtained by the defendant Clara Schneider.

[fol. 33] Neither the evidence in the recorder's court nor the evidence in the common pleas court is returned to us as such. We have, however, a stipulation that the defendant "did call from house to house in the town of Irvington and did show to the occupants of several houses therein * * * and did leave or offer to leave with said occupants certain books or booklets for which defendant solicited or accepted contributions in the form of money"; that said defendant "did not apply for or obtain a permit from the police department in conformance with the ordinance, because she conscientiously believed and maintained that to apply for such permit would be an act of disobedience to the command of Almighty God."

The ordinance in question prohibited such canvass and solicitation by calling from house to house without having first reported to and received a written permit from the Chief of Police, or the officer in charge at Police Headquarters.

The defendant says in her brief "We recognize that in a few cases involving Jehovah's witnesses this court has upheld ordinances such as the one in question as being a reasonable exercise of the police power. We do not question such ruling"; but she nevertheless seems to contend (1) that the ordinance unreasonably restricts and denies freedom of speech and freedom of the press; and (2) that the

town did not show that the acts complained of were inimical to public welfare.

We think that these contentions are plainly without substance and that they have all been considered and decided and overruled in prior decisions, namely, Dziatkiewicz vs. Maplewood, 115 N. J. L. 37; Bergenfield vs. Peterson, 7 Misc. 1019; Maplewood vs. Albright, 13 Misc. 46; Semansky vs. Common Pleas, 13 Misc. 589. Those cases, amongst others that might be cited, are authority so far as this court is concerned.

[fol. 34] It may be well to note in passing that there is nothing in the evidence produced before us to disclose that the defendant was engaged in the mere distribution of books or booklets in the furtherance of religious principles. There was something far different from that: As the trial judge seems to have found, she was engaged in canvassing and selling books and booklets from house to house without a permit at any hour of the day or night, and as the trial judge remarked, to the disturbance of the peace and quiet of citizens in their homes, and to their possible danger in having strangers, unknown to the police, going from house to house by day and night, a condition which the ordinance was designed to prevent, since it provided in effect that the permit when granted should be limited to daylight hours.

And here again attention is called to the fact that the defendant admitted that such ordinance was reasonable.

We, too, think that it was, and that, upon the authority of the cases cited it did not unreasonably restrict or deny freedom of speech or freedom of the press, and that, there being no question here of prohibition, it was a reasonable police regulation having for its purpose a safeguard designed for the public welfare.

We find no support for the argument that the ordinance is not applicable to the defendant, or so applied is unconstitutional.

The writ will be dismissed with costs.

[fol. 35] EXHIBIT S-2

Testimony and Identification Card

The newspapers have had much to say about Loyalty. The Associated Press, however, declines to publish the truth regarding this issue. Every fair-minded person should want to know the true facts. I would like to leave

with you some booklets which discuss problems affecting you. New political methods are everywhere. Dictators grab control of the governments and make special laws. How can you be loyal to all and still be true to God? The answers in these booklets will help you, because there is no dodging or side-stepping the issue, but straightforward Bible answers, which is what you need and want. These three booklets please read carefully, and by contributing, say, ten cents you will make it possible to print more of these which can be placed in the hands of other persons desiring truth.

[fol. 36] To Whom it May Concern:

This is to certify that Clara Schneider whose signature appears below, is an ordained minister of Jehovah God to preach the gospel of God's kingdom under Christ Jesus and is therefore one of Jehovah's witnesses; that he is sent forth by this Society, which is created and organized and chartered by law to preach the gospel of God's kingdom, and that Jehovah's witnesses are commanded to obey God by preaching the gospel, which commandments appear in the Bible at Isaiah 61:1, 2; Isaiah 43:9-12; Matthew 10:7, 12; Matthew 24:14; Acts 20:20; 1 Peter 2:21; and 1 Corinthians 9:16; and that Jehovah's witnesses are compelled to obey God rather than men. (Acts 3:23; Acts 4:19; and Acts 5:29)

That in obedience to God's commandments Jehovah's witnesses preach the gospel and worship Almighty God by calling upon the people at their homes and exhibiting to them the message of said gospel in printed form, such as the Bible, books, booklets and magazines, and thus afford the people the opportunity of learning of God's gracious provision for them.

That said witness of Jehovah is doing this work of bearing testimony before the people in strict accord with the fundamental law of the land and in obedience to God's law, which is supreme. Any kindness and consideration shown this witness of Jehovah will be greatly appreciated and is certain to call forth the blessing of the Lord upon the one showing such kindness. (Matthew 25:31-46)

Watch Tower Bible & Tract Society, C. A. Wise,
Vice-President

Name: Clara Schneider,
Address: 365 Grove St., Newark, N. J.

[fol. 37] NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE TOWN of Irvington, Respondent,

v.

CLARA SCHNEIDER, Appellant

Submitted October 28, 1938. Decided January 13, 1939.

On appeal from a judgment of the Supreme Court, whose opinion is reported at 120 N. J. Law 460.

Per CURIAM:

The judgment under review will be affirmed for the reasons expressed in the opinion of the Supreme Court.

The appellant argues that the decision of the United States Supreme Court in Lovell vs. Griffin, 303 U. S. 444, is dispositive of the present case. That case was determined by the United States Supreme Court after the submission of the present case to the court below and is not mentioned in the opinion. We conclude that Lovell vs. Griffin is not controlling in the situation presented here.

In that case the court reversed a conviction for violation of an ordinance of the City of Griffin, Georgia, which ordinance provided:

"That the practice of distributing, either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the limits of the City of Griffin, without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance, and punishable as an offense against the City of Griffin."

[fol. 38] It was held that this ordinance was void because it amounted to an infringement of the freedom of the press in contravention of the First Amendment to the Federal Constitution. It was pointed out by the court that

"The ordinance in its broad sweep prohibits the distribution of 'circulars, handbooks, advertising, or literature of any kind.' * * * The ordinance is comprehensive with

respect to the method of distribution. It covers every sort of circulation 'either by hand or otherwise'. There is thus no restriction in its application with respect to time or place. It is not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants or the misuse or littering of the streets."

The ordinance of the Town of Irvington under which the conviction below was had provides:

"No person except as in this ordinance provided shall canvass, solicit, distribute circulars, or other matter, or call from house to house in the Town of Irvington without first having reported to and received a written permit from the Chief of Police or the officer in charge at Police Headquarters."

It then goes on to provide that the Chief of Police shall satisfy himself of the good character of the applicant and that the project for which the canvass is to be made is free from fraud. The applicant is required to state certain particulars concerning himself and his project. There is a time limit fixed during which canvassing, etc., may be done.

The difference between the ordinance in the Lovell case and the one in the present case is thus quite marked. In the Lovell case there was no charge of "canvassing" or "soliciting", and, indeed, the ordinance there did not prohibit these things. The charge was simply distributing printed matter without a permit. The charge in the instant case was canvassing without a permit, in violation of the [fol. 39] ordinance. And it is stipulated that she "did call from house to house * * * and did leave or offer to leave with said occupants certain books or booklets, for which defendant solicited or accepted contributions in the form of money * * *"

We are dealing here with the validity of the ordinance only insofar as it requires a permit for canvassing within the municipality. We deem this to be a valid exercise of the police power to promote the safety and welfare of the people. A municipality may protect its citizens against fraudulent solicitation, and when it enacts an ordinance to do so, all persons are required to abide thereby. The ordinance in question was evidently designed for that purpose and we

do not think it violates the federal constitution under the rule laid down in the case of Lovell vs. Griffin, supra.

The judgment is affirmed.

[fol. 40] New Jersey Court of Errors and Appeals

On Appeal Remittitur

The State Town of Irvington, Plaintiff-Respondent,

v.

Clara Schneider, Defendant-Prosecutrix

This matter coming on to be heard at the October Term, 1938, before this Court on an appeal from the New Jersey Supreme Court, and the Court having inspected the transcript and proceedings of the New Jersey Supreme Court, returned with the appeal in this cause, and the reason for reversing the judgment below, and having read the briefs of counsel therein, and having duly considered the same;

It is on this 13th day of February, 1939, Ordered, that the judgment of the New Jersey Supreme Court be in all things affirmed, with costs; and that the record and proceedings be remitted to the New Jersey Supreme Court to which Court the said cause had been remitted on the judgment of the New Jersey Supreme Court, to be therein proceeded with according to law and the practice of the said Court.

Entered February 8th 1939. On motion of Meyer Q. Kessel, Attorney for Plaintiff-Respondent.

Thomas A. Mathis, Clerk.

Filed Feb. 8, 1939.

[fol. 41] New Jersey Court of Errors and Appeals

The State Town of Irvington, Respondent,

v.

Clara Schneider, Appellant

Certificate

I, Thomas A. Mathis, Clerk of the New Jersey Court of Errors and Appeals, do hereby certify that the foregoing

is a true and correct transcript of the record of said Court of Errors and Appeals in the above entitled matter.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed at the City of Trenton, in the State of New Jersey, this 24th day of February in the year of our Lord one thousand nine hundred and thirty-nine, and of the Independence of the United States of America the one hundred and sixty-third.

Thomas A. Mathis, Clerk of New Jersey Court of Errors and Appeals. (Seal of the Secretary of the State of New Jersey.)

[fol. 42] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 3, 1939

The petition herein for a writ of certiorari to the Court of Errors and Appeals of the State of New Jersey is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 43,192. New Jersey, Court of Errors and Appeals. Term No. 707. Clara Schneider, Petitioner, vs. The State (Town of Irvington). Petition for a writ of certiorari and exhibit thereto. Filed February 27, 1939. Term No. 707, O. T., 1938.

FILE COPY

No. 711

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

CLARA SCHNEIDER,
Petitioner,

v.

THE STATE
(Town of Irvington),
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY COURT OF ERRORS AND APPEALS

OLIN R. MOYLE,
JACOB S. KARKUS,
Counsel for Petitioner.

INDEX

Subject Index

INDEX

TABLE OF CASES CITED

INDEX

STATUTES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

CLARA SCHNEIDER,
Petitioner,
v.
THE STATE
(Town of Irvington),
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY COURT OF ERRORS AND APPEALS

To the HONORABLE
THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

The petition of Clara Schneider respectfully shows to this Honorable Court:

A

Summary Statement of Matters Involved

1. *Statement of Facts.*

The petitioner, Clara Schneider, was arrested on December 7, 1935 in the Town of Irvington, New Jersey, and charged with canvassing in said town without a permit from the Chief of Police or officer in charge at police headquarters. (R. 13)

The ordinance under which she was charged prohibits canvassing, soliciting, distributing circulars, or calling from house to house without first having reported to and

received a permit from the Chief of Police or the officer in charge at police headquarters. It stipulates the conditions under which such permit may be issued and provides a penalty not exceeding $100 or thirty days in jail. (R. 14-16)

On December 17, 1935 petitioner was tried before the local Recorder, found guilty, and sentenced to pay a fine of $100 or serve thirty days in jail. (R. 14)

On December 20, 1935 the case was appealed to the Common Pleas Court of Essex County. (R. 6), where the conviction was affirmed on May 12, 1937. (R. 17-18) Opinion of the court appears at page 19 of the Record.

On June 25, 1937 the Supreme Court of New Jersey issued a writ of certiorari to the Essex County Court of Common Pleas in this case (R. 4) and after due hearing thereon the conviction was affirmed by the Supreme Court on August 10, 1937. (R. 31) Opinion of the court is reported at 120 N. J. Law 460, and is shown at page 32 of the Record.

An appeal was taken to the New Jersey Court of Errors and Appeals on September 21, 1938. (R. 1) The Court of Errors and Appeals affirmed the judgment of conviction on January 13, 1939. Its opinion is shown at page 37 of the Record.

At the time of the appeal to the Essex County Court of Common Pleas there were pending before that court four similar cases, which were tried under a stipulation of facts filed in the case of The State v. Clara Schuster. (R. 8-10)

Another stipulation was then entered into whereby it was stipulated and agreed that the substance of facts in the Schuster case apply to petitioner herein in her case. (R. 7-8) The facts applicable to this case, with the exception of name and dates, are those stated in the stipulation in the Schuster case, shown at pages 8 to 10 of the Record.

Petitioner is one of Jehovah's witnesses. The alleged violation of the ordinance consisted of visiting residents of Irvington, exhibiting to them her Testimony and Identification Card (R. 35-36) and leaving or offering to leave with them certain printed literature for which she solicited or

accepted contributions in the form of money. The literature thus circulated consisted of booklets setting forth the gospel of the Kingdom of Jehovah. Those entered as exhibits are filed separately and marked "Exhibits".

Petitioner did not apply for or obtain a permit from the police department because she regarded herself as sent by Jehovah to do His work and that such application would have been an act of disobedience to His commandment.

2. *Substantial Federal Questions Presented.*

In her appeal from the Common Pleas Court to the New Jersey Supreme Court petitioner raised the Federal questions of religious liberty and freedom of speech as guaranteed under the Fourteenth Amendment. (R. 27-28) The New Jersey Supreme Court considered and passed upon such questions and specifically held that the ordinance did not deny freedom of speech or press.

These questions were again raised on the appeal to the New Jersey Court of Errors and Appeals (R. 1-2) and that Court specifically considered in detail and passed upon the issues of freedom of speech and press as guaranteed under the Fourteenth Amendment. (R. 37-39) The Court stated:

> "We do not think it [the Irvington ordinance] violates the Federal Constitution under the rule laid down in the case of Lovell vs. Griffin, supra."

Therefore, there are presented for review Federal questions as follows:

Whether a municipal ordinance may, without violating the due process clause of the Fourteenth Amendment, require persons to secure a license to circulate and distribute printed matter of information and opinion, in exchange for contributions in the form of money.

It is contended that insofar as applied to the petitioner the said ordinance of the Town of Irvington violates the Fourteenth Amendment in the following particulars:

(a) It abridges petitioner's rights of freedom of speech and press which are included within the liberties guaranteed by the due process clause of the Fourteenth Amendment.

(b) It abridges petitioner's right to worship Almighty God according to the dictates of conscience, which right is included within the liberty guaranteed by the due process clause of the Fourteenth Amendment.

B

Reasons Relied on for Allowance of the Writ

1. The New Jersey Court of Errors and Appeals in its holding has rejected and denied the fundamental principles concerning freedom of speech and press declared by this Court in the case of *Lovell* v. *City of Griffin*, 303 U. S. 444.

Petitioner was engaged in the circulation of printed matter containing information and opinion. Her literature was not obscene or immoral, did not advocate unlawful conduct, and there is no suggestion that she was littering the streets with it. The only difference between her case and that of the appellant in *Lovell* v. *City of Griffin* is that the stipulated facts show that petitioner solicited or accepted contributions in the form of money in exchange for literature distributed. (R. 9) That is not shown in the *Lovell* case.

Because of this slight difference the lower court held that petitioner was "canvassing" and therefore subject to the license requirements of the Irvington ordinance. Assuming, for the sake of argument that her act does constitute "canvassing", for what was she canvassing? For the placement of printed matter. Her "canvassing" was merely a part of an activity of the press.

Where a person visits people at their homes for the purpose of circulating and distributing printed matter of information and opinion and accepts contributions in the form of money in exchange therefor, may she be subjected to license and censorship by a municipality without unduly restricting and denying her right to freedom of speech and freedom of press?

The New Jersey Court of Errors and Appeals answered this question in the negative. We contend that the decision is erroneous and constitutes an outright denial of the fundamental principles stated in *Lovell* v. *Griffin,* supra. This Court held that the press may not be subjected to license and censorship, and that license requirements strike at the very foundation of freedom of the press. The lower court disregarded these important principles and stated;

> ". . . we do not think it [the ordinance] violates the federal constitution under the rule laid down in Lovell vs. Griffin, supra."

2. The right to circulate and distribute printed matter is protected from infringement by constitutional guarantees of freedom of speech and press.

The court below holds that there is a distinction between "distribution" of printed matter and "canvassing" for sale of the same. It holds that the guarantees of liberty of speech and press do not apply in the case of circulation through an act designated "canvassing".

We respectfully submit that this is not a sound distinction. Selling, canvassing for sale, soliciting contributions in exchange for literature, or delivering printed matter gratis, are all ways of distribution or circulation of printed matter containing information or opinion. Liberty of circulation is as essential to freedom of press as the liberty of publishing.

Ex Parte Jackson,
96 U.S. 727, 733

Lovell v. City of Griffin, supra

It is immaterial whether the circulation is free or for a price. Newspapers, magazines and other periodicals are sold for money and cannot lawfully be subjected to license or censorship.

It would be strange indeed if the circulation of printed matter gratis would be protected and safeguarded through constitutional guarantees of liberty, but that the circulation of such matter in exchange for a money circulation should not be so protected. There is nothing in this Court's ruling in *Lovell* v. *City of Griffin* to indicate such discrimination. It makes no distinction and declares all proper activities of the press, gratis or for profit, free from license or censorship.

In *Grosjean* v. *American Press Co.*, 297 U. S. 233, this Court upheld the right of newspapers, which are *sold* for money, to be free from a license tax because such license tax would restrict circulation. This clearly indicates that the delivery of printed matter in exchange for a monetary consideration is not so heinous and reprehensible as to remove it from the liberty of unrestricted circulation.

We contend that the Irvington ordinance as applied to the acts of the petitioner is invalid under the "due process" clause of the Fourteenth Amendment in that it unreasonably restricts and denies freedom of speech, freedom of press, and freedom of worship of petitioner.

Wherefore your petitioner prays that this Court issue a writ of certiorari to the New Jersey Court of Errors and Appeals, directing it to certify to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on its docket, being number 65 October Term, 1938; and that the decree of said court may be reversed by this Honorable Court and

that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

CLARA SCHNEIDER

By OLIN R. MOYLE,
JACOB S. KARKUS,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

A

The Opinions of the Courts Below

The opinion of the New Jersey Supreme Court is reported at 120 New Jersey Law 460, and appears in the Record on page 19. The opinion of the New Jersey Court of Errors and Appeals is not reported, and is shown at page 37 of the Record.

B

Jurisdiction

1. *Timeliness.*

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925.

The decree of the New Jersey Court of Errors and Appeals was entered on February 8, 1939 (R. 40) The petition for writ of certiorari was filed herein before the expiration of three months from February 8, 1939.

2. *The Statute.*

The validity of a State statute under the Federal Constitution was drawn into question and the decision was in favor of its validity. Section 1 of said ordinance provides as follows:

"Sec. 1. No person except as in this ordinance provided shall canvass, solicit, distribute circulars, or other

matter, or call from house to house in the Town of Irvington without first having reported to and received a written permit from the Chief of Police or the officer in charge at police headquarters."

The entire statute is printed in the Record at pages 14-16.

In holding that the ordinance is not unconstitutional because it abridges freedom of speech and freedom of the press and freedom of worship, in violation of the Fourteenth Amendment to the Constitution of the United States, the New Jersey Court of Errors and Appeals applied the ordinance to petitioner and decided in its favor as so applied. Pertinent parts of the opinion of the court read:

"We deem this to be a valid exercise of the police power to promote the safety and welfare of the people. A municipality may protect its citizens against fraudulent solicitation, and when it enacts an ordinance to do so, all persons are required to abide thereby. The ordinance in question was evidently designed for that purpose and we do not think it violates the federal constitution under the rule laid down in the case of Lovell vs. Griffin, supra."

Petitioner alleged that said statute violated rights secured to her by the Federal and State Constitutions. The New Jersey Supreme Court and Court of Errors and Appeals denied that any such rights were violated.

The validity of a state statute as applied to the facts of petitioner's case under the Fourteenth Amendment was thus drawn in question in the present proceeding and the decision was in favor of its validity.

C

Statement of the Case

A full statement of the case has been given in the petition for writ of certiorari herein (supra, pages 1 to 3) and for sake of brevity will not be repeated.

D

Specification of Errors

Petitioner assigns the following errors in the record and proceedings in said case:

The court below erred in holding that the ordinance of the Town of Irvington as applied to petitioner is not void by reason of the fact that it is in conflict with Section One of the Fourteenth Amendment to the United States Constitution in the following particulars, to wit:

(a) It abridges freedom of speech and freedom of press.

(b) It prohibits free exercise of worship, of conscience and religious practice.

The court below erred in holding the ordinance as applied to be a valid exercise of the police power.

ARGUMENT

Point One

THE IRVINGTON ORDINANCE INSOFAR AS APPLIED TO THE ACTS OF PETITIONER IS UNCONSTITUTIONAL AND INVALID BECAUSE IT MATERIALLY INTERFERES WITH AND ABRIDGES LIBERTY OF SPEECH AND OF THE PRESS IN VIOLATION OF SECTION ONE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Freedom of speech and press is guaranteed under the Fourteenth Amendment to the United States Constitution:

Gitlow v. New York,
268 U. S. 652, 666

Grosjean v. American Press Co.,
297 U. S. 233

Near v. Minnesota,
283 U. S. 697, 707

Lovell v. City of Griffin,
303 U. S. 444

The case of *Lovell* v. *City of Griffin*, supra, is controlling of this present case. This momentous decision definitely emphasizes and establishes some fundamental principles concerning freedom of the press. Among these are the following:

FIRST: This Court defines what constitutes the press, in the following words:

> "The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. . . . "

SECOND: This Court in clear and unmistakable language adjudicates a death sentence upon all laws, ordinances and statutes which attempt to impose a license upon activities of the press.

The petitioner was engaged in activities of the press and exercising the right of free speech. She was distributing and circulating books and booklets containing the gospel of the Kingdom of Jehovah. Her activities were the same as the appellant's in the *Lovell* case. This Court held that Alma Lovell's activities came within the category of the press; were entitled to protection under its guarantees of liberty and freedom, and held the ordinance invalid which was used to subject her work to license and censorship.

The New Jersey Court of Errors and Appeals holds that there is a distinction between *"distribution"* of books and *"canvassing"* for sale of the same, and implies that the guarantees of liberty do not apply in the case of circulation through sale. (R. 38-39)

We respectfully submit that this is not a sound distinction. Whether printed informative matter or opinion is sold or distributed free is not a point of distinction. Such matter may be distributed in many ways, all of which could come within activities of the press. Newspapers, magazines, and other periodicals are sold for money. The distribution of them by sale is a part of the activities of the press and there-

fore cannot be subjected to license. Efforts that have been made to so license and censor periodicals have been held invalid by the courts. See:

Star Co. v. Brush,
185 N. Y. App. Div. 261

Star Co. v. Brush,
104 N. Y. Misc. 404

Dearborn Publishing Co. v. Fitzgerald,
271 Fed. 479

Just why distribution through *sale* of printed matter may be subjected to license, whereas distribution free may not be subjected to license, is not made clear in the lower court's opinion. The important thing is that the Lovell decision makes no such distinction. This Court emphatically stated that the press may not be subjected to license and that licensing provisions strike at the very foundation of liberty of the press. Such license has a tendency to restrict circulation and this Court holds that the press includes liberty of circulation as well as publication. This Court did not hold that such circulation should be free. In fact, in the case of *Grosjean* v. *American Press Co.*, supra, it was pointed out that the tendency of the license tax would be to restrict circulation, which impelled this Court to hold the law invalid. And it must be borne in mind that this applied to newspapers which are sold from place to place and house to house, not delivered gratis.

The City of New York Magistrates' Court passed upon a similar question in the case of *The People* v. *Max Banks*, 6 N. Y. S. (2d) 41 (N. Y. City Magis. Ct., First District, 1938). In this case the defendant was charged with unlawfully peddling books in the City of New York, without having a peddler's license. The ordinance in question, Chapter 36, Article 6, of the Administrative Code of the City of

New York, required a license for such purpose. The court referred to *Lovell* v. *City of Griffin* and held as follows:

"I hold it to be an infringement of the First and Fourteenth Amendments to the Constitution of the United States guaranteeing liberty of the press to require the payment of a license fee for the privilege of selling a pamphlet on the public streets and to impose a penalty of fine and imprisonment for violation of the section mentioned.

"In applying the principle laid down in the *Grosjean* case to the facts in the *Lovell* case the Chief Justice said:

> 'The ordinance cannot be saved because it relates to distribution and not to publication. "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." . . . The license tax in *Grosjean* v. *American Press Company, supra*, was held invalid because of its direct tendency to restrict circulation.'

"Following this reasoning it is clear that the imposition of a license fee or tax as a prerequisite to the sale of pamphlets on the streets has a direct tendency to restrict circulation, notwithstanding the fact that Article 6 of the Administrative Code permits free distribution of literature on the public streets without restriction. Free circulation depends as much and conceivably more upon sale than upon free distribution considering the cost involved in the free distribution of literature. Adequate circulation may only be rendered possible through sale defraying the cost of production. How effectively a license fee or tax may act as a curtailment upon sale and consequently upon circulation the Supreme Court in the Grosjean case said becomes plain when we consider that if the tax were increased to a

high degree, as it could be, if valid . . . it well might result in destroying circulation.'"

In the case of *City of Cincinnati* v. *Walter F. Mosier* (decided January 30, 1939), the defendant, one of Jehovah's witnesses, was charged with violation of a peddling law of Cincinnati. He was engaged in the same activities as petitioner in this case. On appeal from a conviction the Court of Appeals for the First Appellate District of Ohio reversed the decision and held the ordinance inapplicable to the act of disseminating printed informative matter. The court declared that the ordinance

> "can have no more application to the defendant for the acts charged in the affidavit than it could if it were attempted to apply it for an act performed outside the state, county or city."

To hold that liberty of the press does not include circulation and distribution through sale is just another means of chiseling off this fundamental right. Nowhere in the history of the battle for freedom of the press is any distinction made between informative matter given free and that which is sold. It is an unsound distinction and one which would result in serious infringement on this fundamental right.

Point Two

THE IRVINGTON ORDINANCE INSOFAR AS APPLIED TO THE ACTS OF PETITIONER IS UNCONSTITUTIONAL AND INVALID BECAUSE IT MATERIALLY INTERFERES WITH AND ABRIDGES THE RIGHT OF RELIGIOUS LIBERTY AND WORSHIP IN VIOLATION OF SECTION ONE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Religious freedom is guaranteed to all under the due process clause of the Fourteenth Amendment to the Federal Constitution.

Meyer v. Nebraska,
262 U. S. 390

Hamilton v. Regents,
293 U. S. 245

The extent to which religious freedom abounds in this country is well stated as follows:

"In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property and which does not infringe personal rights is conceded to all."

Watson v. Jones,
80 U. S. 728

State v. De Laney,
1 N. J. Misc. 619

Petitioner entertained the conscientious belief that as a Christian she is commanded to preach the gospel. She has the full and free right to entertain that belief. She was arrested and convicted for engaging in the practice of a religious principle, to wit, the principle that Christians must "preach the word; be instant in season, out of season." She has the full and free right to practice that principle unless by so doing she violates the laws of morality or property or infringes on personal rights. To justify application of the restrictive terms of the ordinance to the acts of the petitioner the burden is on the municipality to show that she violated the laws of morality or property or infringed on personal rights.

No such justification is shown in the record.

The Common Pleas Court held that the action of the petitioner invades personal and property rights by "insisting upon invading their private homes at any hour of the day or night", and the New Jersey Supreme Court and Court of Errors and Appeals seem to be of the same opinion.

There is not one scintilla of evidence to support a claim of such insistence. It is entirely outside of the record.

To invade means to encroach or infringe upon the rights of others; to enter as with a hostile army. The stipulated facts show that on the date in question the petitioner merely called at a number of houses and exhibited to the occupants the testimony and identification card, and that she left or offered to leave with said occupants certain books or booklets, for which she accepted contributions. By no stretch of the imagination can these acts be termed an invasion of personal or property rights. If they are, then every preacher, priest, parish visitor, social worker, political worker or socialite who calls on the people invades their rights.

No municipality has the right and authority to license acts which violate the laws of morality or property or infringe on personal rights. Yet the lower court has convicted the petitioner and imposed a heavy penalty for her failure to secure a permit from the police department to perform

an act which the Common Pleas Court designates an invasion of the people's rights. The judgment of conviction must therefore be termed illegal and void.

To affirm the conviction of the petitioner this Court must disregard the ruling in *Watson* v. *Jones, supra,* and in *Lovell* v. *City of Griffin, supra;* for in no sense of the word can the defendant's acts be construed to be a violation of the laws of morality or property, or infringement on personal rights.

CONCLUSION

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that the errors complained of may be corrected, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the New Jersey Court of Errors and Appeals and finally reverse it.

Respectfully submitted,

OLIN R. MOYLE,
JACOB S. KARKUS,
Counsel for Petitioner.

February 27, 1939.

SU

HAYI

JACQ
of

FILE COPY

SUPREME COURT OF THE UNITED STATES

October Term, 1939

No. 11

CLARA SCHNEIDER, Petitioner,

v.

THE STATE (Town of Irvington), Respondent.

CERTIORARI FROM
NEW JERSEY COURT OF ERRORS AND APPEALS

PETITIONER'S BRIEF

JOSEPH F. RUTHERFORD
Attorney for Petitioner

HAYDEN C. COVINGTON
and
JACOB S. KARKUS
of Counsel

INDEX

Subject Index

INDEX

Subject Index

INDEX

Table of Cases Cited

INDEX

Table of Cases Cited

Miscellaneous Citations

INDEX

Statutes Cited

SUPREME COURT OF THE UNITED STATES

October Term, 1939

No. 11

CLARA SCHNEIDER, Petitioner,

v.

THE STATE (Town of Irvington), Respondent.

CERTIORARI FROM
NEW JERSEY COURT OF ERRORS AND APPEALS

PETITIONER'S BRIEF

Opinions Below

The Opinion of the New Jersey Supreme Court is reported at 120 New Jersey Law 460 and appears at page 21 of the Record. The Opinion of the New Jersey Court of Errors and Appeals is reported at 121 New Jersey Law 542 and appears at page 25 of the Record.

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925.

The New Jersey Court of Errors and Appeals is the highest court of the State of New Jersey in which a judgment may be had, and its decree was a final judgment in this case.

Timeliness

The judgment of the New Jersey Court of Errors and Appeals was entered on the 8th day of February, 1939. (R. 27) The petition for writ of certiorari was filed herein before the expiration of three months from February 8, 1939, to wit, on the 27th day of February, 1939. (R. 29) Copies of the petition and transcript of record were served on counsel for respondent on the 6th day of March, 1939.

The Statute

The statute, the validity of which as construed and applied to petitioner is here drawn in question, is an ordinance of the Town of Irvington, New Jersey, which reads as follows:

ORDINANCE NO. 1437

Ordinance Regulating Canvassing Within the Town of Irvington and Providing Penalties for the Violation Thereof.

Be it Ordained by the Board of Commissioners of the Town of Irvington, in the County of Essex, State of New Jersey, as follows:

Sec. 1. No person except as in this ordinance provided shall canvass, solicit, distribute circulars, or other matter, or call from house to house in the Town of Irvington without first having reported to and received a written permit from the Chief of Police or the officer in charge at Police Headquarters.

Sec. 2. The Chief of Police or in his absence the officer in charge at Police Headquarters shall have power to grant permit to canvass, which permit shall specify the number of hours or days that the permit will be in effect and such officer shall refuse to issue a permit in all cases where the application of the canvasser or further investigation to be made at the discretion of such officer, shows that the canvasser is

not of good character, or that he is canvassing for a project not free from fraud. The Chief of Police or in his absence the officer in charge at Police Headquarters shall revoke the permit for failure or refusal on the part of the permittee to observe the rules and regulations herein set forth.

Sec. 3. Before the permit may be issued the canvasser shall make an application to canvass, giving his or her full name and address, age, height, weight, place of birth, whether married or single, length and place of residence, whether or not previously arrested or convicted of crime, by whom employed, address of employer, clothing worn and description of project for which he or she is canvassing. Each applicant shall be fingerprinted and photographed before a permit shall be issued.

Sec. 4. Rules and Regulations:

No person shall canvass within the Town, except between the hours of 9 a.m. and 5 p.m. A copy of the permittee's photograph shall be carried on his or her permit, which photograph shall be furnished by the applicant. The permittee shall exhibit his or her permit to any police officer or other person upon request. The permittee shall be courteous to all persons in canvassing and shall not importune or annoy any of the inhabitants of the Town and shall conduct himself or herself in a lawful manner. On expiration of the permit the holder thereof shall surrender the same to the officer in charge at Police Headquarters.

Sec. 5. This ordinance shall not affect any person engaged in the delivery of goods, wares, or merchandise or other articles or things in the regular course of business to the premises of persons ordering or entitled to receive the same.

Sec. 6. Any person violating the provisions of this ordinance shall be subject to a fine not exceeding One Hundred Dollars ($100.00) or to imprisonment in the County Jail for a period not exceeding thirty days.

In the event of the imposition of a fine and default in the payment thereof the defendant may be imprisoned in the County Jail for a term not exceeding thirty days.

Sec. 7. This ordinance shall take effect on final passage and publication according to law.

Adopted September 10, 1935.

(Signed) J. Edward Jacobi, Herbert Kruttschnitt, Harry E. Stanley, Percy A. Miller, Commissioners.

Attested by Town Clerk.

In holding that the ordinance is not unconstitutional because it abridges freedom of speech and press and freedom of worship, in violation of the Fourteenth Amendment to the Constitution of the United States, the New Jersey Court of Errors and Appeals applied the ordinance to the petitioner and decided in its favor as so applied.

Statement

The petitioner, Clara Schneider, was arrested on December 7, 1935, in the Town of Irvington, New Jersey, and charged with canvassing in said town without a permit from the chief of police or officer in charge at police headquarters. (R. 7)

The ordinance under which she was charged prohibits canvassing, soliciting, distributing circulars, or calling from house to house without first having reported to and received a permit from the chief of police or the officer in charge at police headquarters. It stipulates the conditions under which such permit may be issued and provides a penalty not exceeding $100 or thirty days in jail. (R. 8-10)

On December 17, 1935, petitioner was tried before the local Recorder, found guilty, and sentenced to pay a fine of $100 or serve thirty days in jail. (R. 8)

On December 21, 1935, the case was appealed to the Common Pleas Court of Essex County (R. 4), where the

conviction was affirmed on May 12, 1937. (R. 10-11) Opinion of the court appears at page 11 of the Record.

On June 25, 1937, the New Jersey Supreme Court issued a writ of certiorari to the Essex County Court of Common Pleas in this case (R. 2) and after due hearing thereon the conviction was affirmed by the Supreme Court on August 10, 1937. (R. 20) Opinion of the court is reported at 120 N. J. Law 460, and is shown at pages 20-22 of the Record.

An appeal was taken to the New Jersey Court of Errors and Appeals on September 21, 1938. (R. 1) The Court of Errors and Appeals affirmed the judgment of conviction on January 13, 1939. Its opinion is shown at page 25 of the Record.

At the time of the appeal to the Essex County Court of Common Pleas there were pending before that court four similar cases, which were tried under a stipulation of facts filed in the case of *The State* v. *Clara Schuster*. (R. 5-7)

Another stipulation was then entered into whereby it was stipulated and agreed that the substance of facts in the Schuster case apply to petitioner herein in her case. (R. 5) The facts applicable to this case, with the exception of name and dates, are those stated in the stipulation in the Schuster case, shown at pages 5 to 7 of the Record.

Petitioner is one of Jehovah's witnesses, an ordained minister of the gospel. The alleged violation of the ordinance consisted of visiting residents of Irvington, exhibiting to them her Testimony and Identification Card (R. 22-23) and leaving or offering to leave with them certain printed literature for which she solicited or accepted contributions in the form of money. The literature thus circulated consisted of booklets setting forth the gospel of the Kingdom of Jehovah God. Those entered as exhibits are filed separately and marked "Exhibits".

Petitioner did not apply for or obtain a permit from the police department because she regarded herself as sent by Jehovah God to do His work and that such application

would have been an act of disobedience to His commandment.

Federal Questions Presented

In her appeal from the Common Pleas Court to the New Jersey Supreme Court petitioner raised the Federal questions of religious liberty, freedom of worship and freedom of speech as guaranteed under the Fourteenth Amendment. (R. 17-18) The New Jersey Supreme Court considered and passed upon such questions and specifically held that the ordinance did not deny such freedom of speech, worship or press. (R. 22)

These questions were again raised on the appeal to the New Jersey Court of Errors and Appeals (R. 1-2) and that Court specifically considered in detail and passed upon the issues of freedom of speech, worship and press as guaranteed under the Fourteenth Amendment. (R. 25-26) The Court stated:

> "We do not think it [the Irvington ordinance] violates the Federal Constitution under the rule laid down in the case of Lovell vs. Griffin, supra."

Therefore, there are presented for review Federal questions as follows:

Whether a municipal ordinance may, without violating the due process clause of the Fourteenth Amendment, require persons to secure a license to circulate and distribute printed matter of information and opinion concerning the worship of God, in exchange for contributions in the form of money.

It is contended that insofar as applied to the petitioner, the said ordinance of the Town of Irvington violates the Fourteenth Amendment in the following particulars:

(a) It abridges petitioner's rights of freedom of speech and press which are included within the liberties guaranteed by the due process clause of the Fourteenth Amendment.

(b) It abridges petitioner's right to worship Almighty God according to the dictates of conscience, which right is included within the liberty guaranteed by the due process clause of the Fourteenth Amendment.

Specification of Errors to Be Urged

Petitioner assigns the following errors in the record and proceedings in said case:

1. The court below erred in holding that Ordinance No. 1437 of the Town of Irvington as construed and applied to the petitioner is not void by reason of the fact that as thus construed and applied it is in conflict with the due process clause of the Fourteenth Amendment to the United States Constitution in the following particulars, to wit:

(a) It abridges and denies freedom of speech and freedom of press.

(b) It abridges freedom of worship and of conscience and religious liberty.

2. The court below erred in holding the ordinance as construed and applied to the petitioner is a valid exercise of the police power.

Points for Argument

POINT I

Ordinance No. 1437 of the Town of Irvington as construed and applied by the New Jersey Court of Errors and Appeals unreasonably restricts and denies freedom of speech and press and is, therefore, unconstitutional and invalid under the due process clause of the Fourteenth Amendment to the United States Constitution.

A

The right to freedom of speech and freedom of press is secured in the due process clause of the Fourteenth Amendment.

B

Petitioner was engaged in exercise of activities of the press.

C

The application of the ordinance unduly restricts and denies petitioner's right to freedom of speech and press.

D

The opinion of the New Jersey Court of Errors and Appeals states an unsubstantial distinction between this case and that of *Lovell v. City of Griffin*, 303 U. S. 444.

POINT II

Ordinance No. 1437 of the Town of Irvington as construed and applied to petitioner by the New Jersey Court of Errors and Appeals unreasonably restricts and denies the right of freedom of worship and religious liberty and is therefore invalid under the due process clause of the Fourteenth Amendment to the United States Constitution.

A

The right to worship Almighty God in accordance with the dictates of conscience is an essential privilege of every person who resides within the jurisdiction of the United States of America.

B

The right to religious liberty is included within the rights secured under the due process clause of the Fourteenth Amendment.

C

The act of preaching the gospel orally or in printed form to persons by going from house to house may not lawfully be subjected to the "burdensome and inquisitorial conditions" of the Irvington ordinance.

Summary of Petitioner's Argument

Petitioner is one of Jehovah's witnesses. At the time of her arrest she was engaged in preaching the gospel by expounding the Word of Almighty God, either orally or in printed form, to persons by going from house to house. She alleges she was doing this in obedience to the mandate of Almighty God. While so doing she left or offered to leave with people certain books or booklets for which she solicited or accepted contributions in the form of money. The books and booklets and a magazine so circulated contained information and opinion on matters concerning the good news of Jehovah's Kingdom. She did not apply for or obtain a license or permit from the police department of Irvington because she conscientiously maintained and believed that to apply for such permit would be an act of disobedience to Almighty God. On trial in the Recorder's Court of Irvington she was sentenced to pay a fine of $100 or serve thirty days in jail. This sentence was affirmed by the Court of Common Pleas, Supreme Court and Court of Errors and Appeals of New Jersey.

Petitioner was circulating printed matter containing information and opinion, and therefore engaged in activities of the press. The Irvington ordinance with its licensing restraint and burdensome conditions of photographing, fingerprinting, limiting of hours of activity and other restraints unreasonably restricted and denied her right to freedom of the press. The fact that she solicited or received contributions in the form of money did not bar her right to the guarantees of freedom of the press. The argument of the New Jersey Court of Errors and Appeals that because she was "canvassing" distinguishes this case from *Lovell* v. *City of Griffin* (303 U. S. 444) is unsubstantial. The ordinance as applied unduly abridges petitioner's right to freedom of the press and is therefore invalid because it violates the due process clause of the Fourteenth Amendment.

Religious liberty, freedom of conscience and freedom of worship are of equal right with freedom of speech, press and assembly. The act of preaching the gospel orally or by printed page from house to house cannot lawfully be subjected to the previous restraint of license or censorship. The ordinance as applied abridges petitioner's right to freedom of worship and conscience and of religious liberty and is therefore invalid because it violates the due process clause of the Fourteenth Amendment.

Argument

POINT I

Ordinance No. 1437 of the Town of Irvington as construed and applied by the New Jersey Court of Errors and Appeals unreasonably restricts and denies freedom of speech and press and is therefore invalid under the due process clause of the Federal Constitution.

A

The right to freedom of speech and press is secured under the due process clause of the Federal Constitution.

Gitlow v. New York
268 U. S. 652

Whitney v. California
274 U. S. 357

Grosjean v. American Press Co.
297 U. S. 233

Lovell v. City of Griffin
303 U. S. 444

Hague v. C. I. O.
59 S. Ct. R. 954 (decided June 5, 1939)

B

Petitioner was engaged in activities of the press.

At the time of her arrest petitioner was visiting residents of Irvington at their homes. She carried with her printed matter containing information and opinion, consisting of copies of a periodical, *The Golden Age*, and two booklets entitled "Government" and "Escape to the Kingdom". (R. 6) These she offered to the people and in return asked for a contribution of ten cents, which would be used to print more of the same type of booklets. (R. 23)

In *Lovell* v. *City of Griffin*, supra, this Court defined the press in the following words:

> "The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. . . . The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.' *Ex parte Jackson*, 96 U. S. 727, 733. The license tax in *Grosjean* v. *American Press Company*, supra, was held invalid because of its direct tendency to restrict circulation."

Petitioner's actions come within this definition. She was circulating booklets and copies of a periodical. Whether for such informative printed matter she solicited contributions to cover the expense of printing the same, or delivered them free, is not material.

The point is that she was engaged in communicating a printed message to people at their homes, and therefore exercising her right to freedom of the press.

C

The application of Ordinance No. 1437 of the Town of Irvington to petitioner by the New Jersey Court of Errors and Appeals unduly restricts and denies her right to freedom of speech and press.

Justice Case of the New Jersey Supreme Court, in the case of *Town of Westfield* v. *Milgram*, 122 N. J. L. 221, well described the conditions of this type of ordinance as "burdensome and inquisitorial". Any person desiring to disseminate informative matter from house to house in Irvington must file an application for permission to do so. Said application must disclose the applicant's name, address, age, height, weight, birthplace, marital condition, record of convictions, employer, description of clothing, description of project, and be accompanied by applicant's photograph and fingerprints. The ordinance limits his hours of activity to the period from 9:00 a.m. to 5:00 p.m. It covers canvassing, soliciting, distributing circulars, or going from house to house without such permission. The permit is issued by the chief of police or the officer in charge at police headquarters if he on investigation considers the applicant to be of "good character" and his project "free from fraud". (R. 8-9)

The ordinance gives the police department complete control over the circulation of informative matter throughout the municipality. It is left to the department's discretion in granting permission based on its determination of what it considers "good character" or "fraud". A prior conviction of any offense would undoubtedly stand as a mark of 'bad character" in the eyes of the department. An ex-convict selling books on prison reform could be interdicted under the ordinance without any redress. Circulation of protest against police or other official corruption could be suppressed easily.

There is no material difference between the discretionary power given to the police under this ordinance and that given to the City Manager under the Griffin (Ga.) ordinance. The City Manager had uncontrolled discretion:

The Irvington police department's discretion is limited only by its definition of what constitutes "good character" or "fraud".

The ordinance further provides that the applicant shall not "annoy" any of the inhabitants of the town. That is a prohibition on the dissemination of controversial matter. The pamphlets of Thomas Paine, William Lloyd Garrison, Alexander Hamilton and other American patriots annoyed many people. It is impossible to circulate information on a disputed issue without annoying someone. At any time upon proof of such annoyance being presented the Irvington police chief may revoke the permit given. (R. 9)

We submit that these "burdensome and inquisitorial" conditions not only strike at the foundation of freedom of the press, but make a complete amputation thereof.

There can be no freedom where the right of circulating information and opinion is subjected to the uncontrolled discretion of the head of the police department. License and censorship are here invoked in undisguised form, and the ordinance should be held void in accordance with the principles set forth in *Lovell* v. *City of Griffin*, supra, and *Hague* v. *C. I. O.*, 59 S. Ct. R. 954 (decided June 5, 1939).

D.

The opinion of the New Jersey Court of Errors and Appeals states an unsubstantial distinction between this case and that of *Lovell* v. *City of Griffin*, 303 U. S. 444.

The New Jersey Court of Errors and Appeals attempts to distinguish between *Lovell* v. *City of Griffin* and this case by reason of the fact, as stated, that petitioner was "canvassing", whereas in the *Lovell* case defendant was distributing printed matter without a permit. We quote from the opinion:

> "The difference between the ordinance in the Lovell case and the one in the present case is thus quite marked. In the Lovell case there was no charge of 'canvassing' or 'soliciting', and, indeed, the ordinance

there did not prohibit these things. The charge was simply distributing printed matter without a permit. The charge in the instant case was canvassing without a permit, in violation of the ordinance. And it is stipulated that she 'did call from house to house . . . and did leave or offer to leave with said occupants certain books or booklets, for which defendant solicited or accepted contributions in the form of money . . .'

"We are dealing here with the validity of the ordinance only insofar as it requires a permit for canvassing within the municipality. We deem this to be a valid exercise of the police power to promote the safety and welfare of the people. A municipality may protect its citizens against fraudulent solicitation, and when it enacts an ordinance to do so, all persons are required to abide thereby. The ordinance in question was evidently designed for that purpose and we do not think it violates the federal constitution under the rule laid down in the case of Lovell vs. Griffin, supra." (R. 26)

The New Jersey Supreme Court made the same distinction. (R. 22)

Further disclosure of the New Jersey Supreme Court's point of view concerning freedom of the press is given in the case of *Town of Westfield* v. *Milgram*, 122 N. J. L. 221. Milgram was charged with violating a duplicate of the Irvington ordinance. The facts showed that he was handing out circulars to persons who were assembling for an adult evening class. Justice Case in reversing the conviction stated:

"The structure of the ordinance is such that, for the reasons given below, I am convinced that the ordinance was not intended and ought not to apply to distribution independent of canvassing, solicitation or house to house calling."

Thus it appears that in the opinion of the New Jersey high courts the guarantees of freedom of press enunciated

in the *Lovell* v. *City of Griffin* decision apply only for circulation gratis upon the public streets. If the person engaged in such activity *canvasses, solicits,* or *goes from house to house,* then the "burdensome and inquisitorial conditions" of the ordinance apply.

We respectfully submit that this constitutes a flat contradiction of this court's holding in *Lovell* v. *City of Griffin.* This court holds that freedom of the press includes publication and circulation of printed matter containing information and opinion, and that the press may not be subjected to license or censorship.

It may be conceded that the liberty to publish and circulate does not include a free and untrammeled privilege of press activity regardless of the rights of others. But although the rights of the public are protected from abuse, it may not under the guise of 'reasonable police regulation' chisel off liberty of the press by subjecting that to license.

Such rights as the public may have to restrict or proscribe the press are clearly stated in the *Lovell* decision. They are as follows:

1. Liberty of the press does not include the right to publish and distribute immoral and obscene matter.
2. Liberty of the press does not include the right to publish and distribute seditious matter.
3. The public may prohibit littering of the streets with printed matter.
4. Disorderly conduct or molestation of the people may be prohibited even though done as an activity of the press.
5. There may be reasonable restrictions as to time and place of distribution.

By no stretch of the imagination can it be said that the facts of this case come within the purview of any of the above limitations. There is nothing immoral or seditious about the literature distributed by petitioner. She did not litter the streets with it; and there is no suggestion that

she was guilty of disorderly conduct or interference with people's rights. Neither is there any evidence that she circulated periodicals and books at any unreasonable time or place. She is not charged with violation of any of these restrictions. The charge is that she *did canvass without securing a license* as provided by the municipal ordinance.

The Irvington ordinance goes far beyond the reasonable limitations just specified. As applied, that ordinance subjects the press to a blanket license requirement. It gives the police department discretionary control over the issuing of such license. It imposes upon the person who engages in lawful press activity "burdensome and inquisitorial conditions" of photographing, fingerprinting, disclosing of life history and other matters. Justification for applying the ordinance to petitioner is based on the bald claim that she was "canvassing". The stipulated facts show that petitioner called from house to house and exhibited to householders her testimony and identification card (Exhibit S-2, R. 22) and left or offered to leave certain books or booklets, for which she solicited or accepted contributions in the form of money. She was engaged in the circulation of printed matter containing proper information and opinion. Therefore petitioner's act is not distinguishable as differing in any material way from the acts of defendant in the *Lovell* case.

The Griffin ordinance prohibited distribution of printed matter whether sold or delivered gratis. The record in the *Lovell* case does not show whether Alma Lovell sold or canvassed for the sale of literature. She was one of Jehovah's witnesses, as is the petitioner in this case. They both acted under the direction of a corporation duly organized and chartered for "dissemination of Bible truths" orally and by means of the printed page; and a reasonable inference is that they both worked in the same or a similar manner. Furthermore, the record shows that Alma Lovell went

from house to house, even as did the petitioner. We quote from the record in the *Lovell* case:

> "At the time of my arrest I had been calling on the people at their homes. I told them about the Kingdom of Jehovah. I displayed to them books and booklets which explain the gospel of the Kingdom and gave them opportunity to secure the printed message."
>
> Lovell v. City of Griffin, supra
> Record p. 12, fol. 17

The only visible distinction between the action of defendant Lovell and petitioner Schneider is that Clara Schneider "solicited or accepted contributions in the form of money" in exchange for literature, and the record does not show that Alma Lovell solicited or accepted such contributions. We submit that is a distinction without a difference. It is the acme of absurdity to claim that liberty of the press is limited to the *free* circulation, i.e., delivery *gratis*, of printed matter. Publishers of daily newspapers and other periodicals would be astounded and shocked to find that the precious guaranty of freedom of the press was removed from them solely because they asked and received money in exchange for their labor and services. The contention of the lower court is without merit and without legal support.

The trend of court decisions is contrary to that of the lower court. Attempts to license and censor the *sale* of printed matter have been held invalid by the courts prior to the case of *Lovell* v. *City of Griffin*.

> Star Co. v. Brush
> 185 N. Y. App. Div. 261
> Star Co. v. Brush
> 104 N. Y. Misc. 404
> Dearborn Publishing Co. v. Fitzgerald
> 271 Fed. 479

In the case of *Grosjean* v. *American Press Co.*, 297 U. S. 233, this Court held that the tendency of the license tax on advertising in a certain class of periodicals would be to restrict circulation and therefore declared the law invalid.

So in the case at bar, the imposition of the ordinance's "burdensome and inquisitorial conditions" would tend to restrict circulation and therefore the Irvington ordinance when applied to the sale of printed matter containing proper information and opinion should be held invalid.

In the case of *City of Cincinnati* v. *Walter F. Mosier*, 61 Ohio App. 81, the defendant, one of Jehovah's witnesses, was charged with violation of a Cincinnati peddling ordinance. He was engaged in the same activity as the petitioner in the instant case. On appeal from a conviction the Court of Appeals for the First Appellate District of Ohio reversed the decision and held the ordinance inapplicable to the act of disseminating printed informative matter. The court declared that the ordinance

> "can have no more application to the defendant for the acts charged in the affidavit than it could if it were attempted to apply it for an act performed outside the state, county or city."

The City of New York Magistrates' Court passed upon a similar question in the case of *The People* v. *Max Banks*, 6 N. Y. S. (2d) 41 (N. Y. City Magis. Ct., First Dist., Manhattan, 1938). In this case the defendant was charged with unlawfully peddling books in the City of New York, without having a peddler's license. The ordinance in question, Chapter 36, Article 6, of the Administrative Code of the City of New York, required a license for such purpose. The court referred to *Lovell* v. *City of Griffin* and held as follows:

> "I hold it to be an infringement of the First and Fourteenth Amendments to the Constitution of the United States guaranteeing liberty of the press to require the payment of a license fee for the privilege of selling a pamphlet on the public streets and to impose a penalty of fine and imprisonment for violation of the section mentioned.
>
> "In applying the principle laid down in the Grosjean case to the facts in the Lovell case the Chief Justice said:

"The ordinance cannot be saved because it relates to distribution and not to publication. "Liberty of circulation is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." . . . The license tax in Grosjean v. American Press Company, supra, was held invalid because of its direct tendency to restrict circulation.'

"Following this reasoning it is clear that the imposition of a license fee or tax as a prerequisite to the sale of pamphlets on the streets has a direct tendency to restrict circulation, notwithstanding the fact that Article 6 of the Administrative Code permits free distribution of literature on the public streets without restriction. Free circulation depends as much and conceivably more upon sale than upon free distribution considering the cost involved in the free distribution of literature. Adequate circulation may often be rendered possible through sale defraying the cost of production. How effectively a license fee or tax may act as a curtailment upon sale and consequently upon circulation the Supreme Court in the Grosjean case said 'becomes plain when we consider that if the tax were increased to a high degree, as it could be, if valid . . . it well might result in destroying circulation.'"

In the case of *People* v. *Samuel Finkelstein*, 2 N. Y. S. (2d) 941, defendant was accused of selling pamphlets upon the streets of the City of New York in violation of an ordinance regulating peddling of merchandise on the streets. The court dismissed the defendant and held as follows:

"In the instant case we do not hold the provisions of the Administrative Code unconstitutional for the reason that the term merchandise does not include the pamphlets which were being sold by defendant. The views expressed herein are not inconsistent with the acknowledged right of the legislature, in the exercise of the police power, to regulate the use of streets, provided such regulation does not undertake to prohibit the distribution or sale of pamphlets, leaflets and other printed matter as well as newspapers and periodicals.

Accordingly the judgment should be reversed and the complaint dismissed."

It cannot be denied that in the case at bar petitioner was engaged in that line of activity called *"the press"*. Regardless of any proper purpose attending adoption of the Irvington ordinance, the undeniable fact is that as applied it amputates petitioner's right to freedom of the press by subjecting it to burdensome license requirements and conditions. The prevention of this form of previous restraint was a leading purpose in the adoption of the constitutional provision safeguarding freedom of the press.

Lovell v. City of Griffin
supra
Near v. Minnesota
283 U. S. 697
Grosjean v. American Press Co.
supra

The court below justifies the validity of the ordinance as applied as an exercise of the police power to promote the safety and welfare of the people. (R. 26) The theory appears to be that the application, photographing, fingerprinting and investigation operates to prevent possible frauds, burglaries and robberies. Thus anticipation of violation of law is turned to serve as an excuse for using the police power to *control* and *regulate* the individual person's lawful exercise of a constitutional right. Justice Brandeis in *Whitney* v *California*, 274 U. S. 357, 378, stated:

"The fact that speech is likely to result in some violence . . . is not enough to justify its suppression."

Applying the logic of that statement to the facts of this case, we paraphrase as follows:

"The fact that canvassing, soliciting or calling from house to house upon the people might result in fraud, burglary or robbery is not enough to justify impos-

ing a previous restraint through license with "burdensome and inquisitorial conditions" upon freedom of the press.'

In other words, the right of free press may not be conditioned upon a possible violation of law by some crook or second-story craftsman. Prevision of disorder or violation of law is an improper condition, a previous restraint, which contradicts itself and is void.

Near v. Minnesota
supra
De Jonge v. Oregon
299 U. S. 353
Dearborn Pub. Co. v. Fitzgerald
supra
Hague v. C. I. O.
supra

We submit that if anticipation of violation of the law is to be the criterion for imposition of restriction on fundamental rights, then every approach of the individual to the public may be made the subject of licensing with "burdensome and inquisitorial conditions". The clergyman may be subjected to prior restraint for fear he may advocate violence or seditious acts by his hearers. Attendants at any public assembly could be subjected to prior health examination to prevent spread of disease. Grocers may be subjected to character examination and license for fear of their imposing fraud. The automobile is often used in the commission of crime. Why not require automobile owners to furnish evidence of good character and proof that their vehicle is not to be used for wrongful or unlawful purposes? This theory, advanced by the New Jersey courts, opens the door to the imposition of many obsolete and totalitarian regulations which destroy the freedom guaranteed to every upright person under the fundamental law of this "land of liberty".

There is a constant, persistent attempt on the part of subversive elements in this country to chisel off freedom

of the press. This court's opinion in *Lovell* v. *City of Griffin*, with its clear, lucid declaration of principles, put a check on much of that subversive activity; but now the attempts are directed afresh, to cut off little by little the beneficial effects of that constructive decision. In New Jersey the press is limited to free circulation on streets and in public places. In Massachusetts, Wisconsin and California the courts of last resort have sustained ordinances prohibiting distribution on the streets. (Cases now before this Court, to wit, *Young* v. *California*, No. 13; *Snyder* v. *Milwaukee*, No. 18; *Nichols* v. *Massachusetts*, No. 29.) If the decisions of these courts are correct, then the circulation of printed matter containing information and opinion from house to house, by canvass or solicitation, and on the streets, is subject to the previous restraint of license or prohibition. Freedom of the press becomes such in name only and this Court's ruling in *Lovell* v. *City of Griffin* is overridden.

It is submitted that the Irvington ordinance as construed and applied is unconstitutional and invalid.

POINT II

Ordinance No. 1437 of the Town of Irvington as construed and applied to petitioner by the New Jersey Court of Errors and Appeals unreasonably restricts and denies the right of freedom of worship and religious liberty and is therefore invalid under the due process clause of the Fourteenth Amendment to the United States Constitution.

A

The right to worship Almighty God in accordance with the dictates of conscience is an essential privilege of every person who resides within the jurisdiction of the United States of America.

From the foundation of the United States this has been recognized as a Christian nation; which means that the people endeavor to follow the lead of Christ Jesus. The Lord Christ Jesus always obeys the law of Jehovah God. All Christians are duty-bound likewise to obey the law of Almighty God, Jehovah. (See Psalm 40:8; 1 Peter 2:21; Deuteronomy 11:27.)

The petitioner is an ordained minister of the gospel of the kingdom of Christ, a Christian, wholly consecrated and devoted to the service of Almighty God. For her to willingly disobey the commandments of God would mean her destruction, as she thoroughly believes.

To worship Almighty God means to obey His commandments, and therefore to serve Him as commanded by His law. The words of Christ Jesus are, "Thou shalt worship the Lord thy God, and him only shalt thou serve." (Matthew 4:10) "God is a Spirit: and they that worship him must worship him in spirit and in truth."—John 4:24.

Black's *Law Dictionary* defines "worship" as the offering of honor and adoration to the Divine Being.

In *Weiss* v. *District Board et al.*, 76 Wis. 177 (212), the

court says that worship includes making Jehovah the object of supreme affection and *rendering to Him supreme obedience*.

At the time of her arrest the petitioner was engaged in worshiping Almighty God in spirit and in truth by acting strictly in obedience to His commandments and in harmony with her conscientious belief. Following are some of the commandments of Almighty God which the Christian must obey:

"Ye are my witnesses, saith the Lord, that I am God." —Isaiah 43:10-12.

"The Spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn."—Isaiah 61:1, 2.

These texts apply to all followers of Christ Jesus.

To all Christians the following commandment is given by the Lord:

"This gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come." (Matthew 24:14) "Go ye into all the world, and preach the gospel to every creature." —Mark 16:15.

With all good conscience petitioner was obeying God's commandments by presenting to the people the message of God's Word, and presenting the same in printed form and inviting them to read the same quietly in their homes. If any thus approached declined to hear, petitioner quietly passed on to the next householder. In no way was she violating the law of morality or of property, nor did her acts infringe on personal rights, nor were they inimical to the safety of the state.

In going from house to house with the gospel message and thus worshiping God according to her conscientious belief, petitioner was following exactly the example of

Jesus Christ and His apostles. Concerning Him it is written; "He went round about the villages, teaching." (Mark 6:6) "He went throughout every city and village, preaching and shewing the glad tidings of the kingdom of God: and the twelve were with him."—Luke 8:1.

Jesus sent His apostles from house to house, to preach the gospel. "And, as ye go, preach, saying, The kingdom of heaven is at hand. And when ye come into an house, salute it. And if the house be worthy, let your peace come upon it: but if it be not worthy, let your peace return to you. And whosoever shall not receive you, nor hear your words, when ye depart out of that house or city, shake off the dust of your feet."—Matthew 10:7, 12, 13, 14.

The apostles taught publicly by going from house to house. See Acts 20:20.

The petitioner was thus worshiping Almighty God, Jehovah, according to the God-given commandment and in accordance with the dictates of her conscience, and was doing so within the bounds of the State of New Jersey, the Constitution of which state guarantees to every person that right.

"No person shall be deprived of the inestimable privilege of worshiping Almighty God in a manner agreeable to the dictates of his own conscience."

New Jersey Constitution,
Article 1, Section 3

The right to thus worship Almighty God is guaranteed to every person under the Fourteenth Amendment of the United States Constitution.

Hamilton v. Regents
293 U. S. 245
Meyer v. Nebraska
262 U. S. 390

It is not within the power or authority of the Town of Irvington by ordinance to abridge or interfere with any person in his conscientious worship of Almighty God.

Human creatures or human powers cannot set aside

the Divine law nor prevent the individual person's conscientious obedience to the law of Almighty God.

"No external authority is to place itself between the finite being and the Infinite when the former is seeking to render the homage that is due, and in a mode which commends itself to his conscience and judgment as being suitable for him to render, and acceptable to its object."

Cooley's *Constitutional Limitations*,
8th Ed., page 968

Supreme

Almighty God Jehovah is supreme, and all who live must depend upon Him and obey Him. He is "the fountain of life". (Psalm 36:9) One who would live must obey God's law. (John 17:3) "The law of the Lord is perfect, . . . The statutes of the Lord are right, . . . the commandment of the Lord is pure."—Psalm 19:7, 8.

The people of all nations where the Bible is believed to be God's Word of truth have recognized the supremacy of His law as therein written. A recognized authority on the common law has well said:

> "Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being. A being independent of any other being has no rule to pursue, but such as he prescribes to himself; but a state of dependence will inevitably oblige the inferior to take the will of him on whom he depends as the rule of his conduct. This principle therefore has more or less extent and effect in proportion as the superiority of the one, and the dependence of the other, is greater or less, absolute or limited, and consequently, as man depends absolutely upon his Maker for everything, it is necessary that he should in all points conform to his Maker's will. . . .
>
> "The will of his Maker is called the law of nature. . . .
>
> "This law of nature, being coeval with mankind, and dictated by God himself, is, of course, superior in obli-

gation to any other. It is binding over all the globe, in all countries, at all times. *No human laws are of any validity if contrary to this;* and such of them as are valid derive all their force and all their authority, mediately or immediately, from the original.

"But in order to apply this to the particular exigencies of each individual, it is still necessary to have recourse to reason, whose office is to discover, as was before observed, what the law of nature directs in every walk of life, by considering what method will tend the most effectively to our own substantial happiness. And if our reasons were always, as in our first ancestor before his transgression, clear and perfect, unruffled by passion, unclouded by prejudice, unimpaired by disease or intemperance, the task would be pleasant and easy. But every man now finds the contrary in his own experience; that his reason is corrupt and his understanding full of ignorance and error.

"This has given manifold occasion for the benign interposition of Divine Providence, which, in compassion to the frailty, the imperfection, and the blindness of human reason, hath been pleased at sundry times and in divers manners to discover and enforce its laws by an immediate and direct revelation. The doctrines thus discovered, we call the revealed or divine law, *and they are to be found only in the Holy Scriptures.*

"Upon these two foundations, the law of nature, and the law of revelation, depend all human laws. *That is to say no human laws should be suffered to contradict these.*"

Blackstone Commentaries,
Chase 3d ed. 5-7

In the case of *Holy Trinity Church* v. *United States*, 143 U. S. 457, this Court declared in plain terms that the United States "is a Christian nation". The United States has always recognized that the law of Almighty God is

supreme; that His law is superior to the law of the state. In that opinion Mr. Justice Brewer among other things adds:

> "But beyond all these matters no purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people. This is historically true. From the discovery of this continent to this present hour, there is a single voice making this affirmation."

The law of Almighty God commands the doing of exactly what the petitioner was engaged in doing at the time of her arrest, namely, worshiping Almighty God, serving Him by preaching this gospel of the Kingdom by going from house to house and presenting the same to the people in printed form. This work she was engaged in doing for the good of mankind. The Town of Irvington cannot by ordinance deprive petitioner of the privilege of obeying God's commandment. It follows, therefore, that the Town of Irvington can have no authority by ordinance or otherwise to issue a permit to do what Jehovah God commands must be done. Petitioner was proceeding exactly within her rights, and it would have been improper for her to ask for or even receive a permit from the Town of Irvington to do what she was doing, since God commands the doing thereof.

B

The right to religious liberty is included within the rights secured under the due process clause of the Fourteenth Amendment.

Meyer v. Nebraska
supra
Hamilton v. Regents
supra

C

The act of preaching the gospel orally or in printed form to persons by going from house to house may not lawfully be subjected to the "burdensome and inquisitorial conditions" of the Irvington ordinance.

The stipulated facts show that petitioner is an ordained minister of God and Christ. (R. 5-7, 23), a follower of Jesus Christ engaged in preaching the gospel by expounding the Word of Almighty God, either orally or in printed form, to persons by going from house to house. She was so engaged at the time of her arrest, and for so doing without meeting the ordinance requirements she was arrested and convicted. (R. 6)

Freedom of conscience, freedom of worship and religious liberty are not limited to right of establishment and maintenance of the various denominations. The early struggles in this land for freedom of worship were largely centered upon the right to hold public assemblies and for groups of individuals to act unitedly according to their understanding of God-given commands contained in the Bible, contrary to the prevailing religion of the state. That battle was fought 150 years ago, and today in these United States over two hundred religious denominations act freely, unhampered by censorship or restriction. But that fundamental liberty goes far beyond the right of Protestants, Jews and Catholics to build churches, hire preachers and attend meetings.

That liberty includes the right of the individual person to practice right principles and to teach Bible truths fully and freely. We quote:

> "In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property and which does not infringe personal rights is conceded to all."
>
> Watson v. Jones
> 80 U. S. 728

This Court in *Davis* v. *Beason*, 133 U. S. 333, defined "religion" as follows:

> "The term 'religion' has reference to one's views of his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. It is often confounded with the cultus or form of worship of a particular sect, but is distinguishable from the latter."

When Jesus Christ and His apostles went from place to place and house to house they were engaged in the actual worship of Almighty God. The petitioner in visiting householders to bring to them the gospel in printed form was engaged in the actual worship of Almighty God. Petitioner asserts (R. 6) that she is engaged in this work in obedience to the command of Almighty God and therefore it becomes to her a conscientious obligation. The licensing provision with its burdensome conditions thus abridges her freedom of conscience.

If *Watson* v. *Jones*, supra, is a valid statement of the extent of religious freedom (and considering the source of that statement it should be so regarded), there can be no license requirement or prohibition of petitioner's right and duty to perform the God-given command recognized by all followers of Jesus Christ that they must preach the gospel.

Freedom of conscience, freedom of worship and religious liberty are inherent rights of equal value with freedom of speech, press and assembly. This Court holds in the *Lovell* case that to subject the press to license or censorship strikes at the very foundation of freedom of the press. Is it not then true that to apply the burdensome and inquisitorial licensing provisions of the Irvington ordinance to the petitioner's act of obeying Almighty God by preaching the gospel of the Kingdom of Almighty God from house to house in obedience to His command likewise strikes at the very foundation of freedom of worship and freedom of conscience?

What mysterious quality can there be in the principles of constitutional law which prohibits licensing or censoring of the press but authorizes a license for preaching the gospel of God's kingdom?

The principle here claimed was well stated by the Georgia Court of Appeals in the case of *Thomas* v. *City of Atlanta*, 1 S. E. (2d) 598. Thomas, the defendant, is one of Jehovah's witnesses, was convicted of violating an Atlanta ordinance requiring persons to register their business. The court held:

> "We do not think it is the duty of an ordained minister of the gospel to register his business with the city. Neither is it peddling for such minister to go into homes and play a victrola, or to preach therein or to sell or distribute literature dealing with his faith if the owner of such home does not object. The preaching and teaching of a minister of a religious sect is not such a business as may be required to register and obtain and pay for a license so to do. Neither is a sale by such minister of tracts or books connected with his faith a violation of a statute against peddling. Under the evidence in this case the sale of the book was collateral to the main object of the defendant, which was to preach and teach his religion. See in this connection, Lovell v. Griffin, [303] U. S. [444], 82 L. ed. 660. We are not meaning to hold by this decision that a business of selling or peddling books may not be subject to registration and a license tax. We hold that under the facts of this case it was error to adjudge this defendant guilty. Judgment reversed."

The case now here was tried upon the stipulation which appears on pages 5 and 6 of the Record, which stipulation includes Exhibit S-2, which Exhibit appears at pages 22 and 23 of the Record.

Exhibit S-2 contains these words:

> "These three booklets please read carefully, and by contributing, say, ten cents you will make it possible to print more of these which can be placed in the hands of other persons desiring truth."

There is not one word of testimony in the record showing or even indicating that your petitioner by thus obeying God's commandment in preaching the gospel was in any manner endangering the inhabitants of the community. The remark in the opinion rendered by the Court of Common Pleas, to the effect that there was a disturbance of the peace of the citizens and possible danger to the inhabitants, is wholly unsupported by any evidence whatsoever. This part of the opinion of the court below therefore is clearly indicative of the prejudice of that court against the rights of your petitioner. This ruling of the Common Pleas Court overrides the constitutional provision of the State of New Jersey relative to the worship of Almighty God. The same ruling is also contrary to what this Court has repeatedly held relative to the right of worshiping Almighty God.

Until recently an ordinance such as that of the Town of Irvington here under consideration, and as construed and applied by the court below, was not dreamed of in America. But since the dictatorial Hague régime has operated in the State of New Jersey many unusual, strange and un-American things have come to pass. That dictatorial influence has affected even the courts of that state as the record in this case discloses. Counsel who practice in the courts are warned thereby that they may be held for contempt by reason of appearing as the legal representative of persons who are charged with violating such ordinance as that of the Town of Irvington.

The dictatorial powers of New Jersey have recently denied the right of peaceable assembly, restricted the freedom of the press, and freedom of speech, and deported persons who attempted to exercise such lawful rights in that state. (*Hague* v. *C. I. O. et al.*, decided June 5, 1939) Now the effort is made to prevent the worship of Almighty God except at the whim and by the permit of police officials. The record here discloses that there is a studied effort in New Jersey to prevent, by the law of men, the

doing of what the law of Almighty God commands must be done by persons who are Christians.

There is not one word in the record showing that the petitioner was canvassing. Many persons, in the exercise of their religious and lawful privileges, solicit money and that without giving anything in return. The petitioner was engaged in presenting to the people at their homes the gospel of Jesus Christ in printed form and accepting only a nominal contribution, which contribution was to be used for the purpose of printing more like Bible instruction that the people may have the same. Where no contribution was forthcoming and one desired to read the literature, it was freely given to them. In these days of great stress surely such charitable work should be commended rather than prevented.

The petitioner could not comply with the terms of the ordinance of the Town of Irvington as construed and applied in the court below for the following reasons:

(1) Because such ordinance as construed and applied is in direct violation of the Constitution of the State of New Jersey guaranteeing the right to worship Almighty God according to one's conscience.

(2) Because the right to worship Almighty God according to one's conscience is guaranteed by the Constitution of the United States.

(3) Because said ordinance, as construed and applied by the court below, is in direct conflict with the law of Almighty God.

When the apostles of Jesus Christ were haled into court, charged with preaching the gospel contrary to the whims of certain officials, they answered: "We ought to obey God rather than men." (Acts 5:29) The same rule applies to Christians today. The enactment and construing of ordinances restricting the free exercise of worshiping Almighty God is an attempt to 'frame mischief by law'. —Psalm 94:20.

For the reasons herein stated, the judgment of the court below should be reversed and the petitioner fully discharged.

Respectfully submitted,

JOSEPH F. RUTHERFORD
Attorney for Petitioner

HAYDEN C. COVINGTON
and
JACOB S. KARKUS
of Counsel

SUPREME COURT OF THE UNITED STATES

October Term, 1939

No. 11

CLARA SCHNEIDER, Petitioner,

v.

THE STATE (Town of Irvington), Respondent.

CERTIORARI FROM
NEW JERSEY COURT OF ERRORS AND APPEALS

PETITIONER'S REPLY BRIEF

JOSEPH F. RUTHERFORD
Attorney for Petitioner

HAYDEN C. COVINGTON
and
JACOB S. KARKUS
of Counsel

INDEX

CITATIONS

SUPREME COURT OF THE UNITED STATES

No. 11

October Term, 1939

CLARA SCHNEIDER, Petitioner,

v.

THE STATE (Town of Irvington), Respondent.

CERTIORARI FROM
NEW JERSEY COURT OF ERRORS AND APPEALS

PETITIONER'S REPLY BRIEF

POINT ONE

The Petitioner is not "one who is within the terms of the Ordinance" of the Town of Irvington and therefore could not be required to make application for permit as a condition precedent to raising the question as to the validity of the ordinance.

ARGUMENT

A

The undisputed evidence that appears in the record is that the Petitioner was at the time she was arrested "an ordained minister of Jehovah God to preach the gospel of God's kingdom under Christ Jesus" and that she was engaged in this work for that sole purpose. It would be wholly inconsistent to require a minister of the gospel to apply to a human official for a permit to do that which the Almighty commands must be done.

The Irvington Ordinance is subject to the same vice as the Ordinance of the town of Griffin, Ga., considered in the Case of *Lovell* v. *Griffin,* for the reason that it attempts to license the press and activities of the press and to license one's activities in performing the duties which Almighty God commands His servants to perform, and for that reason alone is void on its face, without regard to its application. The Ordinance here in question says: "No person shall distribute circulars or other matter or CALL FROM HOUSE TO HOUSE IN THE Town of Irvington without first having reported to and received a written permit from the Chief of Police."

To illustrate the point: If the contention of the Respondent here is to be upheld, then it would mean that a preacher of any church denomination calling upon his parishioners by going from house to house with the Bible in hand to instruct them could not do so without the Chief of Police first issuing to him a permit. According to this Ordinance such a preacher not only must apply for a permit but must be fingerprinted and submit testimony as to his good moral character and then leave it to a policeman to determine whether or not he met the requirements of the Ordinance. Such rule has never obtained in any country except that of the totalitarian state, and certainly could have no application in the United States of America.

It is customary for the nuns of the Catholic Church organization in the performance of their appointed duty to regularly call from house to house, and solicit and receive from persons money and other contributions. Under the Irvington Ordinance as applied they must first obtain a permit to so call from house to house. Otherwise, they would be guilty of a misdemeanor.

The religious organization known as the Salvation Army sends its representatives amongst the people and they call upon them from house to house soliciting contributions and selling their literature. Under the construction placed upon

the Irvington Ordinance by the Respondent their acts in so doing are in violation of the law.

A motorist might be driving through the Town of Irvington and stop to call on several of his former friends residing in different houses in that town, and in doing so "call from house to house". To do so without first obtaining a permit from the Police would be a violation of the Irvington Ordinance according to the construction the Courts below put upon it.

Let us assume that the Nazis, Fascists, and Soviets were moving in secret to invade the American shores and some good citizen learning this fact went from house to house to notify the people of the impending danger and in doing so he printed folders containing such warning which he distributed from house to house without first obtaining a permit from the Police. According to the New Jersey Courts he is guilty of a misdemeanor.

Should the ride of Paul Revere be repeated in the Town of Irvington, New Jersey, without first applying to the Police for a permit, the informer would be subject to spend a term in jail, according to the construction placed upon its ordinance by the Courts below.

If the Lord Jesus Christ, acting exactly as He did when He was on earth in the flesh, were here again and went from house to house in the Town of Irvington doing good and preaching the gospel (Luke 13:22), He would be liable to be incarcerated in the town calaboose for not having first applied to the police to grant Him permission to do what His heavenly Father commanded Him to do.

The Petitioner in this case is a follower of the Lord Jesus Christ, doing exactly what Jesus and His apostles did; and, since she was so doing in obedience to the commandment of Almighty God, it is not within the power of the State or any municipality to regulate or attempt to regulate the manner in which she shall preach the gospel. To apply an ordinance to any of the persons named herein as it has been applied to the Petitioner would certainly

disclose that the ordinance is void on its face, for the reason that the persons against whom the application is made "do not come within the terms of the Ordinance".

Certainly this honorable Court would not hold that a person is required to first violate the law of Almighty God and his own conscience by applying for a permit to do what Almighty God commands him to do and this he must do before he could question the validity of the ordinance under which he is arrested.

Only the corporate or totalitarian states attempt to regulate the conscience of men or attempt to compel them to obey man's law which is in derogation of the law of Almighty God.

The very act of applying for a permit to engage in the service or worship of the Lord God, as the Petitioner was doing in this case, would cause her to violate her conscience and to violate the specific command of the Lord to "preach this gospel of the kingdom" and to go from house to house to do so; and certainly it is not within the power of the state or courts to compel a person to violate his conscience or violate the supreme law as a condition precedent to raising the question of the validity of an ordinance.

B

The laws of the State enacted by imperfect men should never be suffered to contradict the laws of Almighty God, which are supreme. Recognizing this rule the Constitution of the State of New Jersey provides: "No person shall be deprived of the inestimable privilege of worshiping Almighty God in a manner agreeable to the dictates of his own conscience." This same freedom of worship is guaranteed to the citizens by the terms of the "due process" clause of the Fourteenth Amendment of the Constitution of the United States. It is not within the power of any municipality to interfere with the privilege of a citizen's

worshiping Almighty God in a manner agreeable to the dictates of the conscience of the citizen. The Irvington Ordinance as construed and applied to your petitioner requiring her to obtain a permit from a police officer before engaging in the worship of Almighty God is clearly void on its face.

As it appears from the Brief, Respondent's Counsel have a very limited and indefinite idea of what constitutes worship. The best definition to the word "worship" is that given by the Lord himself, and which is: "God is a spirit, and they that worship him must worship him in spirit and in truth." (John 4:24) To worship Him in spirit and in truth means to obey His commandments and serve Him. (Matthew 4:10) The definition of worship is amplified by the acts of the Lord Jesus Christ and those of His faithful apostles. Christ Jesus went about amongst the people from house to house preaching the gospel of the Kingdom. The apostles themselves did the same thing. (Acts 20:20) The specific commandment of the Lord to His followers is: "This gospel of the kingdom shall be preached in all the world for a witness unto all nations." (Matthew 24:14) "Go ye into all the world, and preach the gospel to every creature." (Mark 16:15) To preach does not mean to harangue the people, but to give to the people an opportunity to gain the information they so much need and which is contained in the Bible. That is exactly what your petitioner here was doing. She was going from house to house carrying with her the gospel of the Kingdom in printed form, exhibiting the same to the people and giving them an opportunity to learn God's purpose toward mankind. Certainly there could be nothing more commendable than what she was doing, and certainly such act of hers constitutes the worship of Almighty God 'in a manner agreeable to her conscience', and which worship cannot be interrupted or interfered with by a municipality or the state. It's hardly necessary here to say that any act on the part

of the Petitioner was in any manner whatsoever a violation of the "laws of morality and property" or that the same "infringed upon the personal rights of the people".

Respondent's Counsel may have in mind that the only means of worshiping Almighty God is to go into some building and engage in singing songs or listening to someone harangue the people. Such act is often an act of drawing near unto the Lord merely with one's mouth; and in this connection it is appropriate to cite the words of the Lord Jesus concerning those who thus attempt to worship God, to wit: "This people draweth nigh unto me with their mouth, and honoureth me with their lips, but their heart is far from me. But in vain they do worship me, [because they are] teaching for doctrines the commandments of men." "Thus have ye made the commandment of God of none effect by your tradition." (Matthew 15:6, 8, 9) Concerning those who resort to such formalism and call it worship it is written in the Scriptures: "Having a form of godliness, but denying the power thereof." (2 Timothy 3:5) Your Petitioner in this Case was not haranguing the people, and not disturbing them. She was calling at their homes at a reasonable hour, respectfully calling attention to God's Word, exhibiting to them Bible truths in printed form that they might be aided and comforted in this time of distress. No one who really believes in righteousness and hates iniquity should want to interfere with such a high, laudable and charitable work.

The Ordinance of the Town of Irvington, as that ordinance is construed and applied by the courts below, is invalid on its face, when viewed in the light of the Constitution of the State of New Jersey, and of the Fourteenth Amendment of the Constitution of the United States. Since the petitioner does not come within the terms of the ordinance, for these reasons she would not be required to make application for a permit, before she could raise the

question of the validity of said ordinance, as construed and applied. For the reasons assigned the judgment of the lower court should be reversed and the defendant discharged.

Respectfully submitted,

JOSEPH F. RUTHERFORD,
Attorney for Petitioner.

Hayden C. Covington and
Jacob S. Karkus, of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

CLARA SCHNEIDER,
Petitioner,

v.

THE STATE
(Town of Irvington),
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY COURT OF ERRORS AND APPEALS

Brief of Respondent Opposing Allowance of Writ of Certiorari

MEYER Q. KESSEL,
Counsel for Respondent.

JOSEPH C. BRAELOW,
Of Counsel.

Index

Subject Index

Index

TABLE OF CASES CITED

Index

STATUTES CITED

A

The Opinions of the Courts Below

The opinion of the New Jersey Supreme Court is reported at 120 New Jersey Law 460, and appears in the Record on page 32, (and not page 19 as indicated by petitioner). The opinion of the New Jersey Court of Errors and Appeals is not reported, and is shown at page 37 of the Record.

B.

Statement of the Case

The petitioner was convicted of violating the canvassing ordinance of the Town of Irvington, New Jersey. The evidence shows that the petitioner, Clara Schneider, on the day alleged in the complaint, *canvassed from house to house* in the Town of Irvington, New Jersey, and offered to leave, and did leave, books or booklets, and solicited or received contributions in the form of money; that the petitioner did not apply for or obtain a permit from the Police Department in conformance with the ordinance (R 14-16).

C

Federal Questions Presented

The federal question presented by petitioner (petition 3) poses whether the Irvington ordinance may legally "require persons to secure a license to *circulate and distribute* printed matter———."Circulate and distribute printed matter where? On the street corners? In public buildings at public affairs? No, from house to house. Petitioner neglects to include in the question here presented the stipulated fact (R 9, lines 1-12) that the petitioner was canvassing from house to house for the sale of printed matter for money.

The petitioner further overlooks, in framing the question presented to this Court, the fact that the Irvington ordinance (R 14-16) was conceded by her to be a reasonable exercise of the police power, in the courts below (R 33 lines 22-26.) Nor is it contended here that the ordinance is unreasonable, or that it is not a proper exercise of the police power.

Respondent therefore respectfully urges that the true federal question presented here for review is as follows:

Whether a municipal ordinance, enacted in the proper exercise of the police power in furtherance of the public welfare, and conceded to be reasonable, may require persons to secure a permit (for which there is no charge), to canvass from house to house for the sale of printed matter in exchange for money, without violating the due process clause of the Fourteenth Amendment.

Argument

Answer to Petitioner's Point One

THE IRVINGTON ORDINANCE, OF ITSELF AND AS APPLIED TO THE ACTS OF THE PETITIONER, IS CONSTITUTIONAL AND VALID, BECAUSE IT IS A REASONABLE AND PROPER EXERCISE OF THE POLICE POWER, IN FURTHERANCE OF THE PUBLIC WELFARE, AND ANY ALLEGED CONSTITUTIONAL RIGHTS OF FREE SPEECH AND FREE PRESS ARE SUBJECT TO THE SAME. THE CASE OF *LOVELL VS. CITY OF GRIFFIN*, 303 U. S. 444, DISTINGUISHABLE AND THEREFORE INAPPLICABLE.

Petitioner does not argue here that the ordinance in question (R 14-16) is an unreasonable exercise of the police power, but on the contrary admitted its reasonableness in her argument in the lower courts (R 33 lines 22-26); nevertheless she contends that the application of the ordinance to her acts makes it invalid under the Federal Constitution.

It is universally recognized that the constitutional rights of individuals are subject to a proper exercise of the police power, whether the same be exercised by a state or the United States. Mr. Justice Field, speaking for the Supreme Court of the United States in *Barbier* vs. *Connolly*, 113 U. S. 227, 5 Sup. Ct. 357, commented in the following language:

> "But neither the amendment (Fourteenth Amendment), broad and comprehensive as it is, *nor any other amendment*, was designed to interfere with the power of the State, sometimes termed as police power, to prescribe regulations

> to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develope its resources, and add to its wealth and prosperity."

And again, in *Mugler* vs. *State of Kansas*, 123 U. S. 623, 8 Sup. Ct. 273, it was said:

> "It cannot be supposed that the states intended, by adopting that amendment (Fourteenth), to impose restraints upon the exercise of their powers for the protection of the safety, health, or morals of the community."

The police power, however, must be exercised in a reasonable manner and bear a direct and substantial relation to the public welfare. It is argued that this is precisely what was done in the case at bar.

Our ordinance (R 14-16) *does not prohibit canvassing.* It merely requires that those who canvass make themselves known to the police, obtain and carry a means of identification, and show good character and freedom from fraud of the project for which they are canvassing. There is no fee. Photographing and fingerprinting are for aid in investigation and identification. The furnishing of the information required is for the purpose of establishing good character and freedom from fraud. The requirements are not onerous and are in every way reasonable. Any person who is entitled to canvass can readily comply.

The value of the plan in furnishing a ready means of check-up, preventing frauds, burglaries and robberies, and aiding in identifying persons who are in a position to gain information with respect to persons and places against whom and where crime may be

profitably committed, is evident. It is an aid both in the prevention and the detection of crime, All persons must submit to such regulations for the common welfare.

The requirement is no more burdensome and no less reasonable than is the statute requiring the carrying of an automobile driver's and owner's card. Canvassing is limited to daylight hours between 9:00 A. M. and 5:00 P. M., to prevent the calling upon people at their homes at unreasonable hours, and in furtherance of the public protection.

Certainly the welfare of the public, as demonstrated by our ordinance, is paramount to the alleged rights of the petitioner under the cases hereinbefore set forth.

Defendant seeks solace from the case of *Lovell* vs. *City of Griffin*, 303 U. S. 444. A mere cursory comparison between the ordinance construed in the Lovell case and our ordinance, will disclose the glaring difference so that even "he who runs may read."

The language of Mr. Chief Justice Hughes significantly points out what is lacking in that ordinance. He states:

> "The ordinance is comprehensive with respect to the method of distribution. It covers every sort of circulation 'either by hand or otherwise.' There is thus no restriction in its application with respect to time or place. It is not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets. The ordinance prohibits the distribution

of literature of any kind at any time, at any place, and in any manner without a permit from the City Manager."

In short, the ordinance *was not enacted for the public welfare.* The ordinance in the case at bar will be found to be in complete compliance with the *very self-same things* which Mr. Chief Justice Hughes found wanting in the ordinance there under consideration. Our ordinance provides that as to time, canvassing is limited to the hours between 9 A. M. and 5 P. M.; as to place, canvassing from house to house; as to purpose, the development and protection of the common welfare. It is conceded to be reasonable by the defendant, and was enacted in the interest of the public safety. It would appear therefore, that no more need be said on this score.

Moreover, the petitioner here was *canvassing from house to house* in a neighborhood in the Town of Irvington, and was selling booklets or pamphlets to the *people at their homes,* without first complying with the *regulatory measures contained in our ordinance.* In the Lovell case, the defendant was distributing literature, an act not in any way regulated by that ordinance. The distinguishing features between the two cases so compared, make that case inapplicable to the situation here presented.

Petitioner would have this Court believe that the New Jersey Court of Errors and Appeals holds that there is a distinction between "mere distribution" of books and "mere canvassing" for the sale of the same. No such distinction was made either factually or by inference. The distinction made by the said court was between mere distribution without a permit (which was not regulated by that ordinance); and the canvass-

ing from house to house without a permit, as in the present case, in violation of the provisions of our ordinance which *regulated* the same and which was enacted for the protection of the people.

Petitioner does not make clear, why our ordinance does not apply to the dissemination of printed information by canvassing from house to house. She does not argue that the ordinance is unreasonable, or that it is not a proper exercise of the police power. From what can be gleaned, she seems to contend that the dissemination of printed matter by canvassing, as here, does not yield to the proper exercise of the police power. That is fundamentally unsound in law.

Answer to Petitioner's Point Two

PETITIONER'S ACTS DO NOT CONSTITUTE RELIGIOUS WORSHIP WITHIN THE MEANING OF THE UNITED STATES CONSTITUTION. THE ORDINANCE OF THE TOWN OF IRVINGTON IS A PROPER EXERCISE OF THE POLICE POWER, AND CONSEQUENTLY OF ITSELF AND AS APPLIED TO THE ACTS OF THE PETITIONER IS CONSTITUTIONAL.

In *Davis vs. Beason*, 133 U. S. 333, 33 L. Ed. 637, the definition of "religion" within the meaning of the United States Constitution is interpreted by Mr. Justice Field, who speaking for the United States Supreme Court, said:

> "The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. It is often confounded with the cultus or form of worship of a particular sect, but is distinguishable from the latter."

The petitioner canvassing from house to house, for the sale of pamphlets for a consideration, certainly was not engaged in the worship of God within the meaning of the United States Constitution, and she is within the purview of the ordinance, which was within the power of the municipality to enact. There is no question here of prohibition. It is rather a simple question of reasonable police regulation; regulations which have for their purpose safeguards against those who are not so concerned with ideals and morals, and who may resort to any guise, in-

nocent or otherwise, in order to further their illegal schemes and objectives.

There is no religious question here, nor is there any quarrel with the religious beliefs of the petitioner. It is the *canvassing* by petitioner (although allegedly done in furtherance of or because of her religious beliefs) which is subject to the proper exercise of the police power.

In passing, it is to be noted that some of the contents of the booklets cannot fairly be termed "religious beliefs". Attention is more specifically called to page 259 of the exhibit entitled "The Golden Age".

Conclusion

Although the subject matter raised in the lower courts concerned the State and Federal Constitutions, *there is no true controversial Federal question here involved.* The distinction between the *Lovell* vs. *City of Griffin* case and the case at bar is so obvious, and so palpably distinguishable, as to make that case *inapplicable here;* further it is so fundamental in law that the rights of persons are subject to the proper exercise of the police power, as here, that the irresistible conclusion reached must be that there is nothing before this Court which presents a controversial issue worthy of its consideration, and therefore it is respectfully urged that the within petition be denied.

Respectfully submitted,

MEYER Q. KESSEL,
Counsel for Respondent.

JOSEPH C. BRAELOW,
Of Counsel.

Dated: March 10th, 1939.

Supreme Court of the United States

No. 11.

OCTOBER TERM, 1939.

CLARA SCHNEIDER,
Petitioner,

vs.

THE STATE (Town of Irvington),
Respondent.

CERTIORARI FROM
NEW JERSEY COURT OF ERRORS AND APPEALS.

RESPONDENT'S BRIEF.

MEYER Q. KESSEL,
Attorney for Respondent.

JOSEPH C. BRAELOW,
Of Counsel.

Arthur W. Cross, Inc., Law Printers, 71-73 Clinton Street, Newark, N. J.

INDEX.

CITATIONS.

Supreme Court of the United States

No. 11.

October Term, 1939.

Clara Schneider, Petitioner, *vs.* The State (Town of Irvington), Respondent.	*Certiorari* from New Jersey Court of Errors and Appeals.

RESPONDENT'S BRIEF.

The Opinions of the Courts Below.

The Opinion of the Essex County Court of Common Pleas is unreported and appears at page 11 of the Record. The Opinion of the New Jersey Supreme Court is reported at 120 New Jersey Law 460 and appears at page 21 of the Record. The Opinion of the New Jersey Court of Errors and Appeals is reported at 121 New Jersey Law 542 and appears at page 25 of the Record.

Jurisdiction.

Jurisdiction of the Supreme Court of the United States is invoked by petitioner under Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925.

Statement.

The stipulation (R. 5-7) provides in its introduction "that the following testimony and documents shall be considered as having been presented in evidence before" the Court of Common Pleas of Essex County.

The petitioner was convicted of violating the canvassing ordinance of the Town of Irvington, New Jersey. The evidence shows that the petitioner, Clara Schneider, on the day alleged in the complaint, *canvassed from house to house* in the Town of Irvington, New Jersey, and offered to leave, and did leave, books or booklets, and solicited or received contributions in the form of money; that the petitioner did not apply for a permit from the Police Department in conformance with the ordinance (R. 8-10).

Federal Questions Presented.

The federal questions presented here for review are as follows:

Whether a municipal ordinance, enacted in the proper exercise of the police power in furtherance of the public welfare and order, and conceded to be reasonable, may require persons to secure a permit (for which there is no charge), to canvass from house to house for the sale of printed matter in exchange for money, without violating the due process clause of the Fourteenth Amendment.

It is contended that the ordinance of the Town of Irvington does not abridge petitioner's rights of freedom of speech and the press or her rights of freedom of worship and religious liberty as guaranteed by the due process clause of the Fourteenth Amendment.

ARGUMENT.

POINT ONE.

Since the ordinance is valid on its face and petitioner failed to seek a permit under it, she is not entitled to contest its validity in answer to the charge against her, nor may she complain of anticipated improper or invalid action in administration.

In *Lovell* v. *City of Griffin*, 303 U. S. 444, this court expressly acknowledged the above principle, but accepted jurisdiction because the ordinance under consideration therein was *void on its face*. The ordinance *sub judice* is not only *not void on its face*, but petitioner *concedes* that the ordinance is valid on its face. In no argument in her brief does petitioner contend that the ordinance itself is void. Her sole contention is that as "construed and applied" the ordinance unduly restricts *her*. Throughout her brief, petitioner objects to the ordinance *only* as "construed and applied".

At no time did, nor does petitioner now object that the ordinance is an unreasonable exercise of the police power. She admits that it is reasonable, but not "as construed and applied to her". In her brief in the New Jersey Supreme Court, the defendant said:

> "• • • We recognize that in a few cases involving Jehovah's witnesses this court has upheld ordinances such as the one in question as being a reasonable exercise of the police power. We do not question such ruling" (R. 21).

This petitioner *did not apply* for a permit under the ordinance. From the statements made by her throughout

these proceedings, as to her character and the freedom from fraud of her project, it would appear that she would have, without doubt, been entitled to such a permit. At no time has respondent claimed that petitioner was not entitled to a permit under the ordinance, nor that her character was anything but exemplary. But since the petitioner did not apply for a permit, and the principle is well established that when a statute, valid on its face, requires the issue of a permit or license as a condition precedent to carrying on a business or vocation, one who is within the terms of the statute, but has failed to make the required application, is not at liberty to complain because of his anticipation of improper or invalid action in administration nor to contest its validity in answer to the charge against him.

Lovell v. *Griffin, supra;*
Smith v. *Cahoon*, 283 U. S. 553;
Gundling v. *Chicago*, 177 U. S. 183;
Lehon v. *Atlanta*, 242 U. S. 53.

It is therefore submitted that this petitioner is not entitled to contest the validity of the ordinance in answer to the charge against her, and that the judgment be affirmed.

POINT TWO.

The Irvington ordinance, of itself and as applied to the acts of the petitioner, is constitutional and valid, because it is a reasonable and proper exercise of the police power in furtherance of the public welfare, and the Constitutional rights of freedom of speech and the press are properly subject to the same. The case of *Lovell* v. *Griffin*, 303 U. S. 444, distinguishable and inapplicable.

The ordinance of the City of Griffin, Ga. was declared void by this Court in *Lovell* v. *Griffin, supra,* because it subjected the freedom of the press to the power of censorship. It placed the power to license in the hands of the city manager without any restriction thereon. But a comparison of the two ordinances reveals immediately that the ordinance of the Town of Irvington satisfies every objection raised by this Court. Our ordinance contains all the limitations found lacking in the City of Griffin ordinance.

In the Griffin ordinance the practice of distributing was prohibited without the written permission of the city manager. No legal standard or yardstick was provided to govern his exercise of that authority. Our ordinance provides that Chief of Police *shall refuse a permit only where the applicant is "not of good character or that he is canvassing for a project not free from fraud"* (R. 9).

Petitioner claims in her brief (petitioner's brief, p. 13), that there is no difference between the discretionary powers granted in the two ordinances, saying:

> "* * * there is no material difference between the discretionary power given to the police under this ordinance and that given to the city manager under the Griffin (Ga.) ordinance * * *."

She says further on said page,

> "It is left to the department's discretion in granting permission based on its determination of what it considers 'good character' or 'fraud'."

But we submit that there is a very material difference, and that is the establishment of a legal yardstick by which the administration's authority is to be guided and restrained. Such a provision was sustained by this Court in the interest of the public welfare in *Hall* v. *Geiger-Jones Co.*, 242 U. S. 539, at page 552:

> "We turn back, therefore, to consider the more specific objections to the law. The basis of them is, as we have seen, the power conferred upon the commissioner, which is asserted to be arbitrary. The objection is somewhat difficult to handle. It centers in the provision that requires the commissioner, as a condition of a license, 'to be satisfied of the good repute in business of such applicant and named agents,' and in the power given him to revoke the license or refuse to renew it upon ascertaining that the licensee 'is of bad business repute, has violated any provision of the act, or has engaged or is about to engage, under favor of such license, in illegitimate business or fraudulent transactions.' It is especially objected that, as to these requirements, no standard is given to guide or determine the decision of the commissioner. Therefore, it is contended that the discretion thus vested in the commissioner leaves "'room for the play and action of purely personal and arbitrary power.'"

We are a little surprised that it should be implied that there is anything recondite in a business reputation or its existence as a fact which should require much investigation. If in special cases there may be

controversy, those cases the statute takes care of; an adverse judgment by the commissioner is reviewable by the courts. Sec. 6373-8. So also as to other judgments.

Besides, it is certainly apparent that, if the conditions are within the power of the state to impose, they can only be ascertained by an executive officer. Reputation and character are quite tangible attributes, but there can be no legislative definition of them that can automatically attach to or identify individuals possessing them, and necessarily the aid of some executive agency must be invoked. The contention of appellees would take from government one of its most essential instrumentalities, of which the various national and state commissions are instances. But the contention may be answered by authority. In Gundling *v.* Chicago, 177 U. S. 183, 44 L. ed. 725, 20 Sup. Ct. Rep. 633, an ordinance of the city of Chicago was passed on which required a license of dealers in cigarettes, and, as a condition of the license, that the applicant, if a single individual, all of the members of the firm, if a copartnership, and any person or persons in charge of the business, if a corporation, should be of good character and reputation, and the duty was delegated to the mayor of the city to determine the existence of the conditions. The ordinance was sustained. To this case may be added Red 'C' Oil Mfg. Co. *vs.* Board of Agriculture, 222 U. S. 380, 394, 56 L. ed. 240, 245, 32 Sup. Ct. Rep. 152, and cases cited; Mutual Film Corp *v.* Industrial Commission, 236 U. S. 230, 59 L. ed. 552, 35 Sup. Ct. Rep. 387, Ann. Cas. 1916C, 296; Brazee *v.* Michigan, 241 U. S. 340, 341, 60 L. ed. 1034, 1035, 36 Sup. Ct. Rep. 561. See also Reetz *v.* Michigan, 188 U. S. 505, 47 L. ed. 563, 23 Sup. Ct. Rep. 390; New York *ex rel.* Lieberman *v.* Van De Carr, 199 U. S. 552, 50 L. ed. 305, 26 Sup. Ct. Rep. 144.

> The discretion of the commissioner is qualified by his duty, and besides, as we have seen, the statute gives judicial review of his action. Pending such review, we must accord to the commissioner a proper sense of duty and the presumption that the functions intrusted to him will be executed in the public interest, not wantonly or arbitrarily to deny a license to or take one away from a reputable dealer (Plymouth Coal Co. *v.* Pennsylvania, 232 U. S. 531, 545, 58 L. ed. 713, 719, 34 Sup. Ct. Rep. 359)."

Under the laws of the State of New Jersey, any action of a municipal administration official is subject to review by *certiorari* or *mandamus*, which further qualifies his action.

The petitioner's argument, therefore, that there is no material difference between the discretionary powers granted by the two ordinances, is untenable.

Next it should be noted that in its opinion in *Lovell* v. *Griffin, supra*, at page 451, this Honorable Court said:

> "The ordinance is comprehensive with respect to the method of distribution. It covers every sort of circulation 'either by hand or otherwise.' There is thus no restriction in its application with respect to time or place. It is not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets. The ordinance prohibits the distribution of literature of any kind at any time, at any place, and in any manner without a permit from the city manager."

But the present ordinance of the Town of Irvington is limited in mode and purpose to the maintenance of public

order and the preventing of molestation of the inhabitants. The ordinance *does not prohibit*, it does not unlawfully infringe upon the constitutional right of freedom of speech and the press; *it only regulates*. Actually and on the face of the ordinance, it is apparent that it is only a reasonable exercise of the police power to protect the inhabitants of the community. The administrative officer may deny a permit only to persons not of good character or canvassing for a project not free from fraud. As hereinabove argued, such regulation is not arbitrary, but merely a reasonable and proper exercise of the police power.

In the case of *City of Pittsburgh* v. *Ruffner*, 134 Pa. Super. 192, 4 Atlantic (2d) 224, 228, a similar ordinance was under review at the instance of the same sect of which petitioner is a member, and the Superior Court of Pennsylvania said:

> "Nor does the ordinance unlawfully infringe upon the constitutional right of freedom of the press. This appellant may, notwithstanding this ordinance, freely print and communicate his thoughts and opinions and may freely speak, writ and print on any subject, 'being responsible for the abuse of that liberty,' and he may, subject to reasonable regulation, freely distribute the same; but that furnishes no warrant for upholding his *unlimited and unrestricted* right to enter the homes and offices of others to *sell* to them the books and pamphlets he may have written or books and pamphlets expressive of his thoughts and opinions. The case of Lovell *v.* Griffin, 303 U. S. 444, 58 S. Ct. 666, 82 L. Ed. 949, on which appellant relies, declares no such doctrine."

And concerning the sale of books and pamphlets, the Court continued:

"The present ordinance relates only to the hawking and peddling of merchandise and the selling of goods and merchandise from house to house, or in buildings within the City limits. Its purpose is reasonable and salutary—the protection of the public against fraud and imposition. That books and pamphlets may be merchandise cannot be doubted: and that vendors of books and printed material may be unworthy and unscrupulous and may deceive and defraud the public is too well known to need extensive reference. We have had in this court a number of cases where advantage was taken of householders and business men by unscrupulous book agents. The latest case which comes to our recolleciton is Ashland Towson Corp. *v.* Kasunic, 110 Pa. Super. 496, 168 A. 502. And the case of Federal Trade Commission *v.* Standard Education Society, 302 U. S. 112, 58 S. Ct. 113, 82 L. Ed. 141, decided in 1937, is proof positive that the selling of books by agents is not wholly free from deceitful practices."

The other provisions of the ordinance of the Town of Irvington are neither "burdensome nor inquisitorial". They require merely that such persons make themselves known to the police, obtain and carry means of identification, and submit to photographing and fingerprinting. *There is no fee charged for the permit.* The information and identification thus furnished provides the police with a ready means of check-up, and aids in preventing frauds, burglaries and other crimes. It assists in the prevention and detection of crimes by persons who under the guise of canvassing, soliciting or distributing from house to house, may use such pretense or entrance for ulterior or improper purposes. Canvassing is limited to daylight hours between 9 A. M. and 5 P. M. to prevent calling upon

people at their homes at unreasonable hours, and in furtherance of their protection. The group of which petitioner is a member should no more object to the burden of obtaining a reasonable canvassing permit than they do to take out automobile licenses in order to do such canvassing, and make application for incorporation franchise licenses and pay the necessary fees in order to conduct their entire, allegedly religious operations.

A police regulation, obviously intended as such, and not operating unreasonably beyond the occasions of its enactment, is not invalid simply because it may affect incidentally the exercise of some right guaranteed by the Constitution. In all matters within the police power, some compromise between the exigencies of public health, safety and welfare and the full exercise of their rights by individuals must be reached. The test in such cases is whether the regulation in question is a bona fide exercise of the police power or an arbitrary and unreasonable interference with individuals under the guise of police regulations. It is strenuously argued by respondent that our ordinance is obviously a police regulation enacted for the public welfare, and does not operate beyond the occasions of its enactment. It is *conceded to be a reasonable exercise of the police power*, and as applied to this petitioner is not an arbitrary or unreasonable interference with her constitutional rights. The compromise reached is a fair one, and her right must yield to the right of the general public; otherwise government must cease to function.

It is universally recognized that the constitutional rights of individuals are subject to a proper exercise of the police power, whether the same be exercised by a state or the United States. Mr. Justice Field, speaking for the Su-

preme Court of the United States in *Barbier* v. *Connolly*, 113 U. S. 27, 31, commented in the following language:

> "But neither the amendment (Fourteenth Amendment), broad and comprehensive as it is, nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity."

And again, in *Mugler* v. *State of Kansas*, 123 U. S. 623, 664, it was said:

> "It cannot be supposed that the States intended, by adopting that Amendment (Fourteenth), to impose restraints upon the exercise of their powers for the protection of the safety, health, or morals of the community."

The police power, however, must be exercised in a reasonable manner and bear a direct and substantial relation to the public welfare. We submit that this is precisely what the ordinance of the Town of Irvington does.

Contrary to the assertions and generalizations made by petitioner (petitioner's brief, p. 33), that the courts of the State of New Jersey have permitted "unusual, strange and un-American" things to come to pass, reported cases clearly show that our courts are just as alert as this Honorable Court to detect and prevent violations of constitutional guarantees. Ordinances in New Jersey which contain the violations found to exist in the case of *Lovell* v. *Griffin, supra,* have been uniformly condemned by the New Jersey courts prior to that decision.

In the cases of *Borough of Bergenfield* v. *Daniel E. Morgan and Thurston Hilldring* (Jehovah's Witnesses), decided March 21, 1934 by the New Jersey Supreme Court in a memorandum opinion filed but not reported, an ordinance was under consideration which provided:

> "Sec. 36. Distributing handbills, pamphlets, advertising matter, or any other literature in or along any public street or public place or from door to door of private houses, stores, or apartment houses in the Borough without the permission of the Police Department."

Justice Bodine in his opinion said:

> "The very recent case of Summit *v.* Grampp, decided by the Supreme Court, opinion by Justice Case, filed December 28, 1933, is dispositive of the matter. He said:
>
> > 'By the terms of the ordinance the permit is to issue only upon the written approval of the chief of police, who is given absolute discretion in granting or withholding his approval without any determining factors other than his own impulses. The reservation in an ordinance of discretionary powers to a public officer to give to one and withhold from another the privilege of violating the ordinance is condemned by our cases. South Orange *v.* Heller, 92 N. J. Eq. 506; Keavy *v.* Randall, 1 Misc. 311. No legislative authority is cited for such a provision. It is unreasonable that a chief of police, with no rule of determination except his own wishes, should determine who is and who is not to distribute advertisement.'
>
> The convictions are set aside."

It is further to be noted that in the assignments of error on appeal to this Honorable Court in *Lovell* v. *Griffin, supra* (Record, *Lovell* v. *Griffin*, p. 20, specification 1), it was contended:

> "• • • that said ordinance of the City of Griffin • • • was arbitrary, capricious, and unreasonable and set up a prohibition bearing no relationship to public health, morals or welfare or any other matter within the domain of the police power • • •."

Further quoting from the same Record, page 21, specification 4, the appellant therein contended:

> "• • • that the said ordinance fixed no rule for the guidance or control of the city manager of the City of Griffin in granting or refusing permits, and said ordinance did not set up any standard regulating the application of said ordinance to acts which are unmoral or against the peace, good order, and dignity of the state • • •."

That these contentions are entirely lacking either in the specifications of error assigned in the present case, or in the brief of petitioner, merely emphasizes that the distinction between the ordinance of the City of Griffin and the present ordinance of the Town of Irvington is recognized by petitioner and studiously avoided.

The ordinance of the Town of Irvington violates none of this petitioner's constitutional rights, and is a reasonable exercise by the Town of the police powers conferred upon it by the New Jersey statutes (Article 14, Section 2, Chapter 152, Laws of 1917), which provide:

> "Every municipality shall have power to make, enforce, amend and repeal such other ordinances,

regulations, rules and by-laws not contrary to the laws of this State or of the United States as they may deem necessary and proper for the good government, order, protection of persons and property, and for the preservation of the public health, safety and prosperity of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this act or by any law of this State."

POINT THREE.

The Irvington ordinance, of itself and as applied to the acts of petitioner, is constitutional and valid, because it is a reasonable and proper exercise of the police power in furtherance of the public welfare, and the Constitutional rights of freedom of worship and religious liberty are properly subject to the same.

All of the arguments hereinabove set forth relating to the right of reasonable regulation, as part of the police power, of the rights of freedom of speech and the press to the extent that public order and welfare demand, apply with equal reason and force to the right of freedom of worship and religion and need not be here repeated.

Denuded of all embellishment, the petitioner's argument that the ordinance of the Town of Irvington as construed and applied to her, violates her constitutional rights of freedom of worship and religion, may be stated and answered as three propositions as follows.

She claims first that to require her to *apply* for a permit is to compel her to do an act of disobedience to Almighty God, and would mean her destruction, as she thoroughly believes (petitioner's brief, pp. 24 and 29); therefore the ordinance is void as construed and applied to her.

To accede to this proposition would mean that while the ordinance may legally govern the action of all other persons it can have no application to her. She, as a member of her sect, is privileged and immune. By her refusal to apply for a permit, she maintains that the determination of the existence of her privileged status is for her alone and not the local administrative authority. If her right to determine when a law can be construed and applied to her and when not, is recognized in this case, then we can expect her and other members of her sect to demand this right of self determination of legality and construction in all other regulatory statutes.

In *Davis* v. *Beason*, 133 U. S. 333, 344, Mr. Justice Field cited the language used by Mr. Chief Justice Waite in *Reynolds* v. *United States*, 98 U. S. 145, 165, 166, as follows:

> "'. . . This being so, the only question which remains is whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or, if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice? So here,

> as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary, because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.' "

The answer to this contention of petitioner is that her religious beliefs are not necessarily supreme to the law of the land, because labeled religion. If in *practice* they conflict with legislation designed to protect the public welfare, safety and order, they must reasonably submit and conform for the common good.

Her second contention is that the law of the Bible as *interpreted* by the sect to which petitioner belongs, is supreme and that no mere municipal ordinance nor any law made by man may supercede that *interpretation*.

In her brief (Brief, p. 24, *et seq.*), petitioner justifies the above conclusion by a long series of logistic syllogisms quite obviously containing many premises based on opinion and her particular religious belief, and not on recognized fact or truth. There are a great many religions and innumerable sects in this country. A great many of them are founded on their individual interpretations of the Bible, and they far from agree with one another. If every one of those religious groups was permitted to act as "they thoroughly believed", fanaticism would supercede law and only chaos could result.

In the case of *Hamilton* v. *Regents of the University of California*, 293 U. S. 245, 268, Mr. Justice Cardoza said:

> "Manifestly a different doctrine would carry us to lengths that have never yet been dreamed of. The conscientious objector, if his liberties were to be thus extended, might refuse to contribute taxes in furtherance of a war, whether for attack or for defense, or in furtherance of any other end condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government. One who is a martyr to a principle—which may turn out in the end to be a delusion or an error—does not prove by his martyrdom that he has kept within the law."

But even assuming that the interpretation of the Bible as propounded by petitioner and "Jehovah's Witnesses", is the one and only true one, it still is subject to such reasonable regulation as public welfare and order require.

Lastly, petitioner claims and argues that by canvassing from house to house and selling pamphlets she is worshiping God and preaching the gospel, and to require her to obtain a permit to do that violates her constitutional right.

Here again the argument hinges on her individual interpretation of what worshiping God means. The petitioner is entitled to believe whatever she desires, but her beliefs in practice are subject to the rights of the public in general and the local governing authority must be permitted to regulate for the good of all. As this Court has stated in *Davis* v *Beason, supra,* page 342:

> "It was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order, and morals of society. With man's

> relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with."

And continuing at page 345:

> "It is assumed by counsel of the petitioner that, because no mode of worship can be established, or religious tenets enforced, in this country, therefore any form of worship may be followed, and any tenets, however destructive of society, may be held and advocated, if asserted to be a part of the religious doctrines of those advocating and practicing them. But nothing is further from the truth. While legislation for the establishment of a religion is forbidden, and its free exercise permitted, it does not follow that everything which may be so called can be tolerated."

While giving serious consideration and patient answer to the apparently imposing argumentative edifice created by petitioner, we must not permit it to obscure the facts. Actually no one has interfered with petitioner's right to worship God as she pleases, actually no one has said or ordered that she may not canvass from house to house and sell her pamphlets and spread her interpretation of the gospel, actually no one has said or ordered that she may not have a permit to do these things. This entire mountain made of a mole hill results solely from petitioner's obstinate refusal to *apply* for a permit to canvass and not from any actual violation or threat of violation of her right of freedom of worship or religion.

In *Dziatkiewicz* v. *Maplewood*, 115 N. J. L. 37, 42, New Jersey Supreme Court, in passing upon the validity of a similar ordinance involving the same sect, Justice Perskie said:

> "• • • It would seem to this Court that men and women engaged in the lofty and idealistic work, as the prosecutors claim to have been engaged herein, i. e., of spreading their religious conceptions to the public at large, ought to be among the very first to submit to and comply with all reasonable regulations which, obviously, were enacted in the interest of the public health and safety and which regulations were designed for the good of the greatest number. There is no question here of prohibition; it is rather a simple question of reasonable police regulations; regulations which have for their purpose safeguards against those who are not so concerned with ideals and morals; a type, of which there are altogether too many, which resort to any guise, innocent or otherwise, in order to further their illegal schemes and objectives."

This Court has held by sustaining the opinions of the State courts that no constitutional guaranty of religious freedom is infringed by regulations requiring public school pupils to salute the flag, even though the refusal of such pupils be based on conscientious scruples. Those cases involved members of this same religious sect known as "Jehovah's Witnesses". The principle involved is identical with the one in the case *sub judice*.

Leoles v. *Landers* (1938) 302 U. S. 656 (dismissing appeal from 184 Ga. 580, 192 S. E. 218);

Hering v. *State Bd. of Education*, 303 U. S. 624 (dismissing appeal from 118 N. J. L. 566, 194 A. Rep. 177).

Petitioner, in her brief (p. 32), cites and quotes from the case of *Thomas* v. *City of Atlanta*, 1 S. E. (2d), 598, and attempts to use the language of that court, which petitioner quotes, in support of her argument. Petitioner neglects to set forth that the ordinance in the quoted case provided for the payment of a license fee of $60.00 for peddlers. The ordinance in no way was related to the exercise of the police power for the public welfare, but was enacted only for the purpose of raising revenue. Obviously, the Irvington ordinance and the one referred to in the *Thomas* case, are absolutely different. The case is not in point.

But it may be well in closing our reference to the above case, to state the thought of Judge MacIntyre, who specially concurred in the above opinion. We quote from page 599 of said case:

> "I concur in the result but not in all that is said in the opinion. A preacher or teacher of a religious sect, under some circumstances, may so sell books and literature dealing with his religious faith as to become a peddler."

In the interest of clarity only, respondent calls to the Court's attention that it is not stipulated, as claimed, that petitioner is an "ordained minister". The only reference thereto is contained in Exhibit S-2 (R. 23), which was the card carried by petitioner. But even if she is entitled to that designation, which we seriously question on the evidence presented, it alone does not exempt her from the provisions of the ordinance, nor to deny her exemption for that reason, does not violate her constitutional rights of freedom of worship and religious liberty. Likewise, an examination of petitioner's pamphlet entitled "The Golden Age", Ex-

hibit S-3, makes us reluctant to consider it the preaching of the gospel of God as she contends.

There is no religious question here, nor is there any quarrel with the religious beliefs of the petitioner. It is the *canvassing* by petitioner (although allegedly done in furtherance of or because of her religious beliefs) which is subject to the proper exercise of police power in the interest of public welfare and order.

Conclusion.

For the reasons herein stated, the judgment of the court below should be affirmed.

Respectfully submitted,

MEYER Q. KESSEL,
Attorney for Respondent.

JOSEPH C. BRAELOW,
Of Counsel.

: P: 2,3,

SUPREME COURT OF THE UNITED STATES.

Nos. 11, 13, 18 and 29.—October Term, 1939.

11	Clara Schneider, Petitioner, *vs.* The State (Town of Irvington).	On Writ of Certiorari to the Court of Errors and Appeals of the State of New Jersey.
13	Kim Young, Appellant, *vs.* The People of the State of California.	On Appeal from the Appellate Department of the Superior Court of Los Angeles County, California.
18	Harold F. Snyder, Petitioner, *vs.* City of Milwaukee.	On Writ of Certiorari to the Supreme Court of the State of Wisconsin.
29	Elmira Nichols and Pauline Thompson, Appellants, *vs.* Commonwealth of Massachusetts.	On Appeal from the Superior Court, County of Worcester, Commonwealth of Massachusetts.

[November 22, 1939.]

Mr. Justice Roberts delivered the opinion of the Court.

Four cases are here, each of which presents the question whether regulations embodied in a municipal ordinance abridge the freedom of speech and of the press secured against state invasion by the Fourteenth Amendment of the Constitution.[1]

No. 13.

The Municipal Code of the City of Los Angeles, 1936, provides:

"Sec. 28.00. 'Hand-Bill' shall mean any hand-bill, dodger, commercial advertising circular, folder, booklet, letter, card, pamphlet,

[1] On account of the importance of the question we granted certiorari in two of the cases, and noted jurisdiction in the others.

sheet, poster, sticker, banner, notice or other written, printed or painted matter calculated to attract attention of the public."

"Sec. 28.01. No person shall distribute any hand-bill to or among pedestrians along or upon any street, sidewalk or park, or to passengers on any street car, or throw, place or attach any hand-bill in, to or upon any automobile or other vehicle."

The appellant was charged in the Municipal Court with a violation of Sec. 28.01. Upon his trial it was proved that he distributed handbills to pedestrians on a public sidewalk and had more than three hundred in his possession for that purpose. Judgment of conviction was entered and sentence imposed. The Superior Court of Los Angeles County affirmed the judgment.[2] That court being the highest court in the State authorized to pass upon such a case, an appeal to this court was allowed.

The handbill which the appellant was distributing bore a notice of a meeting to be held under the auspices of "Friends Lincoln Brigade" at which speakers would discuss the war in Spain.

The court below sustained the validity of the ordinance on the ground that experience shows littering of the streets results from the indiscriminate distribution of handbills.[3] It held that the right of free expression is not absolute but subject to reasonable regulation and that the ordinance does not transgress the bounds of reasonableness. *Lovell* v. *City of Griffin*, 303 U. S. 444, was distinguished on the ground that the ordinance there in question prohibited distribution anywhere within the city while the one involved forbids distribution in a very limited number of places.

No. 18.

An ordinance of the City of Milwaukee, Wisconsin, provides: "It is hereby made unlawful for any person . . . to circulate or distribute any circular, hand-bills, cards, posters, dodgers, or other printed or advertising matter . . . in or upon any sidewalk, street, alley, wharf, boat landing, dock or other public place, park or ground within the City of Milwaukee." . . . .

---

[2] 3 Calif. App. Supp. 62; 85 Pac. (2d) 231.

[3] On the hand-bill were the words "Admission 25¢ and 50¢". The Superior Court adverted to these and said: "Whatever traffic in ideas the Friends Lincoln Brigade may have planned for the meeting, the cards themselves seem to fall within the classification of commercial advertising rather than the expression of one's views. But if this be so, our conclusion is not thereby changed."

The petitioner, who was acting as a picket, stood in the street in front of a meat market and distributed to passing pedestrians hand-bills which pertained to a labor dispute with the meat market, set forth the position of organized labor with respect to the market, and asked citizens t ref in from patronizing it. Some of the bills were thrown in the street by the persons to whom they were given and it resulted that many of the papers lay in the gutter and in the street. The police officers who arrested the petitioner and charged him with a violation of the ordinance did not arrest any of those who received the bills and threw them away. The testimony was that the action of the officers accorded with a policy of the police department in enforcement of the ordinance to the effect that, when such distribution resulted in littering of the streets, the one who was the cause of the littering, that is, he who passed out the bills, was arrested rather than those who received them and afterwards threw them away. The Milwaukee County court found the petitioner guilty and fined him. On appeal the judgment was affirmed by the Supreme Court.[4]

The court held that the purpose of the ordinance was to prevent an unsightly, untidy, and offensive condition of the sidewalks. It distinguished *Lovell* v. *City of Griffin, supra*, on the ground that the ordinance there considered manifestly was not aimed at prevention of littering of the streets. The court approved the administrative construction of the ordinance by the police officials and felt that this construction sustained its validity. The court said: "Unless and until delivery of the hand-bills was shown to result in a littering of the streets their distribution was not interfered with."

No. 29.

An ordinance of the City of Worcester, Massachusetts, provides: "No person shall distribute in, or place upon any street or way, any placard, handbill, flyer, poster, advertisement or paper of any description."

The appellants distributed in a street leaflets announcing a protest meeting in connection with the administration of State unemployment insurance. They did not throw any of the leaflets on

---

[4] — Wis. —; 283 N. W. 301.

230 131

the sidewalk or scatter them. Some of those to whom the leaflets were handed threw them on the sidewalk and the street, with the result that some thirty were lying about.

The appellants were arrested and charged with a violation of the ordinance. The Superior Court of Worcester County rendered a judgment of conviction and imposed sentence. The Supreme Judicial Court overruled exceptions.[5] That court held the ordinance a valid regulation of the use of the streets and sought thus to distinguish it from the one involved in *Lovell* v. *City of Griffin, supra*, which the court said was not such a regulation. Referring to the ordinance the court said: "It interferes in no way with the publication of anything in the city of Worcester, except only that it excludes the public streets and ways from the places available for free distribution. It leaves open for such distribution all other places in the city, public and private."

No. 11.

An ordinance of the Town of Irvington, New Jersey, provides: "No person except as in this ordinance provided shall canvass, solicit, distribute circulars, or other matter, or call from house to house in the Town of Irvington without first having reported to and received a written permit from the Chief of Police or the officer in charge of Police Headquarters." It further enacts that a permit to canvass shall specify the number of hours or days it will be in effect; that the canvasser must make an application giving his name, address, age, height, weight, place of birth, whether or not previously arrested or convicted of crime, by whom employed, address of employer, clothing worn, and description of project for which he is canvassing; that each applicant shall be fingerprinted and photographed; that the Chief of Police shall refuse a permit in all cases where the application, or further investigation made at the officer's discretion, shows that the canvasser is not of good character or is canvassing for a project not free from fraud; that canvassing may only be done between 9 A. M. and 5 P. M.; that the canvasser must furnish a photograph of himself which is to be attached to the permit; that the permittee must exhibit the permit to any police officer or other person upon re-

[5] Mass. Adv. 1938, 1969; 18 N. E. (2d) 166.

quest, must be courteous to all persons in canvassing, must not importune or annoy the town's inhabitants or conduct himself in an unlawful manner and must, at the expiration of the permit, surrender it at police headquarters. Persons delivering goods, merchandise, or other articles in the regular course of business to the premises of persons ordering, or entitled to receive the same, are exempted from the operation of the ordinance. Violation is punishable by fine or imprisonment.

The petitioner was arrested and charged with canvassing without a permit. The proofs show that she is a member of the Watch Tower Bible and Tract Society and, as such, certified by the society to be one of "Jehovah's Witnesses". In this capacity she called from house to house in the town at all hours of the day and night and showed to the occupants a so called testimony and identification card signed by the society. The card stated that she would leave some booklets discussing problems affecting the person interviewed; and that, by contributing a small sum, that person would make possible the printing of more booklets which could be placed in the hands of others. The card certified that the petitioner was an ordained minister sent forth by the society, which is organized to preach the gospel of God's kingdom, and cited passages from the Bible with respect to the obligation so to preach. The petitioner left, or offered to leave, the books or booklets with the occupants of the houses visited. She did not apply for, or obtain, a permit pursuant to the ordinance because she conscientiously believed that so to do would be an act of disobedience to the command of Almighty God.

The petitioner was convicted in the Recorder's Court. The Court of Common Pleas affirmed the judgment. On a further appeal the Supreme Court affirmed.[6] The Court of Errors and Appeals affirmed the judgment of the Supreme Court.[7]

The Supreme Court held that the petitioner's conduct amounted to the solicitation and acceptance of money contributions without a permit, and held the ordinance prohibiting such action a valid regulation, aimed at protecting occupants and others from disturbance and annoyance and preventing unknown strangers from visiting houses by day and night. It overruled the petitioner's contention that the measure denies or unreasonably restricts freedom

[6] 120 N. J. Law, 460.
[7] 121 N. J. Law, 542.

of speech or freedom of the press. The Court of Errors and Appeals thought *Lovell* v. *City of Griffin, supra,* not controlling, since the ordinance in that case prohibited all distribution of printed matter and was not limited to ways which might be regarded as consistent with the maintenance of public order or as involving disorderly conduct, molestation of inhabitants, or misuse or littering of the streets, whereas the ordinance here involved is aimed at canvassing or soliciting, subjects not embraced in that condemned in the *Lovell* case. The Court said: "A municipality may protect its citizens against fraudulent solicitation and, when it enacts an ordinance to do so, all persons are required to abide thereby. The ordinance in question was evidently designed for that purpose" . . .

The freedom of speech and of the press secured by the First Amendment against abridgment by the United States is similarly secured to all persons by the Fourteenth against abridgment by a state.[8]

Although a municipality may enact regulations in the interest of the public safety, health, welfare or convenience, these may not abridge the individual liberties secured by the Constitution to those who wish to speak, write, print or circulate information or opinion.

Municipal authorities, as trustees for the public, have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which the streets are dedicated. So long as legislation to this end does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may lawfully regulate the conduct of those using the streets. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic; a group of

---

[8] Gitlow v. New York, 268 U. S. 652; Whitney v. California, 274 U. S. 357; Stromberg v. California, 283 U. S. 359; Grosjean v. American Press Co., 297 U. S. 233; DeJonge v. Oregon, 299 U. S. 353; Herndon v. Lowry, 301 U. S. 242; Lovell v. Griffin, 303 U. S. 444. There is no averment or proof in any of the cases that the appellants or petitioners are citizens of the United States, and in the *Young* case, No. 13, the applicable provisions of the municipal code were challenged on the sole ground that they infringed the due process clause of the Fourteenth Amendment. Cf. New York ex rel. Cohn v. Graves, 300 U. S. 308, 317; Northwestern Bell Telephone Co. v. Nebraska State Ry. Comm., 297 U. S. 471 at 473.

distributors could not insist upon a constitutional right to form a cordon across the street and to allow no pedestrian to pass who did not accept a tendered leaflet; nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion.

This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties.[9] The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government by free men. It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties.

In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights.

In *Lovell* v. *City of Griffin*, *supra*, this court held void an ordinance which forbade the distribution by hand or otherwise of literature of any kind without written permission from the city manager. The opinion pointed out that the ordinance was not limited to obscene and immoral literature or that which advocated unlawful conduct, placed no limit on the privilege of distribution in the interest of public order, was not aimed to prevent molestation of inhabitants or misuse or littering of streets, and was without limitation as to time or place of distribution. The court said that, whatever the motive, the ordinance was bad because it imposed penalties for the distribution of pamphlets, which had become historical weapons in the

[9] Grosjean v. American Press Co., *supra*, p. 244; DeJonge v. Oregon, *supra*, p. 364; Lovell v. City of Griffin, *supra*, p. 450.

defense of liberty, by subjecting such distribution to license and censorship; and that the ordinance was void on its face, because it abridged the freedom of the press. Similarly in *C. I. O.* v. *Hague*, — U. S. —, an ordinance was held void on its face because it provided for previous administrative censorship of the exercise of the right of speech and assembly in appropriate public places.

The Los Angeles, the Milwaukee, and the Worcester ordinances under review do not purport to license distribution but all of them absolutely prohibit it in the streets and, one of them, in other public places as well.

The motive of the legislation under attack in Numbers 13, 18 and 29 is held by the courts below to be the prevention of littering of the streets and, although the alleged offenders were not charged with themselves scattering paper in the streets, their convictions were sustained upon the theory that distribution by them encouraged or resulted in such littering. We are of opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press. This constitutional protection does not deprive a city of all power to prevent street littering. There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets.

It is argued that the circumstance that in the actual enforcement of the Milwaukee ordinance the distributor is arrested only if those who receive the literature throw it in the streets, renders it valid. But, even as thus construed, the ordinance cannot be enforced without unconstitutionally abridging the liberty of free speech. As we have pointed out, the public convenience in respect of cleanliness of the streets does not justify an exertion of the police power which invades the free communication of information and opinion secured by the Constitution.

It is suggested that the Los Angeles and Worcester ordinances are valid because their operation is limited to streets and alleys and leaves persons free to distribute printed matter in other public places. But, as we have said, the streets are natural and proper places for the dissemination of information and opinion; and one

is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.

While it affects others, the Irvington ordinance drawn in question in No. 11, as construed below, affects all those, who, like the petitioner, desire to impart information and opinion to citizens at their homes. If it covers the petitioner's activities it equally applies to one who wishes to present his views on political, social or economic questions. The ordinance is not limited to those who canvass for private profit; nor is it merely the common type of ordinance requiring some form of registration or license of hawkers, or peddlers. It is not a general ordinance to prohibit trespassing. It bans unlicensed communication of any views or the advocacy of any cause from door to door, and permits canvassing only subject to the power of a police officer to determine, as a censor, what literature may be distributed from house to house and who may distribute it. The applicant must submit to that officer's judgment evidence as to his good character and as to the absence of fraud in the "project" he proposes to promote or the literature he intends to distribute, and must undergo a burdensome and inquisitorial examination, including photographing and fingerprinting. In the end, his liberty to communicate with the residents of the town at their homes depends upon the exercise of the officer's discretion.

As said in *Lovell* v. *City of Griffin, supra,* pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people. On this method of communication the ordinance imposes censorship, abuse of which engendered the struggle in England which eventuated in the establishment of the doctrine of the freedom of the press embodied in our Constitution. To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees.

Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others

may not, disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press.

We are not to be taken as holding that commercial soliciting and canvassing may not be subjected to such regulation as the ordinance requires. Nor do we hold that the town may not fix reasonable hours when canvassing may be done by persons having such objects as the petitioner. Doubtless there are other features of such activities which may be regulated in the public interest without prior licensing or other invasion of constitutional liberty. We do hold, however, that the ordinance in question, as applied to the petitioner's conduct, is void, and she cannot be punished for acting without a permit.

The judgment in each case is reversed and the causes are remanded for further proceedings not inconsistent with this opinion.

So ordered.

Mr. Justice McREYNOLDS is of opinion that the judgment in each case should be affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.